



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XVII

#### TAX AVOIDANCE

#### CHAPTER I

##### CANCELLATION OF TAX ADVANTAGES FROM CERTAIN TRANSACTIONS IN SECURITIES

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

**C1** Pt. 17 Ch. 1 modified (31.7.1997) by [Finance \(No. 2\) Act 1997 \(c. 58\), s. 35\(5\)](#)

#### **703 Cancellation of tax advantage.**

(1) <sup>M1</sup>Where—

- (a) in any such circumstances as are mentioned in section 704, and
- (b) in consequence of a transaction in securities or of the combined effect of two or more such transactions,

a person is in a position to obtain, or has obtained, a tax advantage, then unless he shows that the transaction or transactions were carried out either for bona fide commercial reasons or in the ordinary course of making or managing investments, and that none of them had as their main object, or one of their main objects, to enable tax advantages to be obtained, this section shall apply to him in respect of that transaction or those transactions.

(2) For the purposes of this Chapter a tax advantage obtained or obtainable by a person shall be deemed to be obtained or obtainable by him in consequence of a transaction in securities or of the combined effect of two or more such transactions, if it is obtained or obtainable in consequence of the combined effect of the transaction or transactions and the liquidation of a company.

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- (3) Where this section applies to a person in respect of any transaction or transactions, the tax advantage obtained or obtainable by him in consequence thereof shall be counteracted by such of the following adjustments, that is to say an assessment, the nullifying of a right to repayment or the requiring of the return of a repayment already made (the amount to be returned being chargeable under Case VI of Schedule D and recoverable accordingly), or the computation or recomputation of profits or gains, or liability to tax, on such basis as the Board may specify by notice served on him as being requisite for counteracting the tax advantage so obtained or obtainable.
- (4) <sup>M2</sup>Where, by virtue of an assessment under subsection (3) above to counteract a tax advantage obtained in circumstances falling within paragraph D or paragraph E of section 704 and consisting of the avoidance of a charge to income tax, income tax has been paid by any person on an amount specified in the assessment and it appears to the Board that, as a result of that payment, it is just and reasonable in the circumstances that an amount should be treated as having been paid by way of advance corporation tax, the Board shall serve a notice under subsection (5) below on every company which appears to them to be concerned in the transaction or transactions in consequence of which the tax advantage was obtained.
- (5) A notice under this subsection—
- (a) shall provide that, for the purposes of section 239 (but not for the purposes of entitling any person to a tax credit under section 231), such company or each of such companies as may be specified in the notice is to be treated as having paid, on such date as may be so specified, such amount of advance corporation tax as may be so specified in relation to that company;
  - (b) shall specify the amount which is equal to income tax at the basic rate on the amount on which income tax has been paid as mentioned in subsection (4) above; and
  - (c) may contain such supplementary or incidental directions as appear to the Board to be appropriate;
- but the total amount of advance corporation tax which, by virtue of paragraph (a) above, a notice under this subsection may treat as having been paid shall not exceed the amount specified in accordance with paragraph (b) above.
- (6) If, in a case falling within subsection (4) above, it does not appear to the Board that any amount should be treated as having been paid by way of advance corporation tax, the Board shall serve on every company which appears to them to be concerned in the transaction or transactions in consequence of which the tax advantage was obtained in a notice informing the company of the Board's decision that no amount is to be treated as having been paid by way of advance corporation tax.
- (7) <sup>M3</sup>*In the case of a man and his wife living with him (whether or not she is separately assessed to tax), this Chapter shall, subject to subsection (8) below, be treated as applying to him in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the wife were his property, rights or liabilities in relation to which she had acted only as nominee for him, and shall be treated as applying to the wife in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the man were her property, rights or liabilities in relation to which he had acted only as nominee for her<sup>F1</sup>.*
- (8) *No adjustment made under subsection (3) above by reference to any transaction or transactions to counteract any tax advantage shall by virtue of subsection (7) above be so made that a person bears more tax than if the transaction or transactions had*

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*not had as a consequence that any relief or increased relief from, or repayment or increased repayment of, income tax, or any deduction in computing profits or gains, was obtained or obtainable, or that the way in which receipts accrued was such that the recipient did not pay or bear tax on them*<sup>F2</sup>.

- (9) The Board shall not give a notice under subsection (3) above until they have notified the person in question that they have reason to believe that this section may apply to him in respect of a transaction or transactions specified in the notification; and if within 30 days of the issue of the notification that person, being of opinion that this section does not so apply to him, makes a statutory declaration to that effect stating the facts and circumstances upon which his opinion is based, and sends it to the Board, then subject to subsection (10) below, this section shall not apply to him in respect of the transaction or transactions.
- (10) If, when a statutory declaration has been sent to the Board under subsection (9) above, they see reason to take further action in the matter—
- (a) the Board shall send to the tribunal a certificate to that effect, together with the statutory declaration, and may also send therewith a counter-statement with reference to the matter;
  - (b) the tribunal shall take into consideration the declaration and the certificate, and the counter-statement, if any, and shall determine whether there is or is not a prima facie case for proceeding in the matter, and if they determine that there is no such case this section shall not apply to the person in question in respect of the transaction or transactions;
- but any such determination shall not affect the operation of this section in respect of transactions which include that transaction or some or all of those transactions and also include another transaction or other transactions.
- (11) Any notice or notification under subsection (3) or subsection (9) above, or under section 708, concerning the application of this section to a person who has died may be given or issued to his personal representatives, and the provisions of this Chapter relating to the making of a statutory declaration, to rights of appeal and to the giving of information shall be construed accordingly.
- (12) This section applies whether the tax advantage in question relates to a chargeable period ending before or after the commencement of this Act, but nothing in this section shall authorise the making of an assessment later than six years after the chargeable period to which the tax advantage relates; and no other provision contained in the Tax Acts shall be construed as limiting the powers conferred by this section.

#### Textual Amendments

- F1** Repealed by 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.
- F2** Repealed by 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.

#### Marginal Citations

- M1** Source—1970 s.460(1)-(3)
- M2** Source—1970 s.460(4), (4A), (4B), 1973 Sch.11 1
- M3** Source—1970 s.460(5)-(9)

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## 704 The prescribed circumstances.

<sup>M4</sup>The circumstances mentioned in section 703(1) are—

- (A) That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being a sale or purchase followed by the purchase or sale of the same or other securities, the person in question receives an abnormal amount by way of dividend, and the amount so received is taken into account for any of the following purposes—
- (a) any exemption from tax, or
  - (b) the setting-off of losses against profits or income, or
  - (c) the giving of group relief, or
  - (d) the application of franked investment income in calculating a company's liability to pay advance corporation tax, or
  - (e) the application of a surplus of franked investment income under section 242 or 243, or
  - (f) the computation of profits or gains out of which are made payments falling within section 348 or 349(1), or
  - (g) the deduction from or set-off against income of interest under section 353.

OR

- (B) (1) That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being sale or purchase followed by the purchase or sale of the same or other securities, the person in question becomes entitled—
- (a) in respect of securities held or sold by him, or
  - (b) in respect of securities formerly held by him (whether sold by him or not),
- to a deduction in computing profits or gains by reason of a fall in the value of the securities resulting from the payment of a dividend thereon or from any other dealing with any assets of a company.
- (2) Where a company in the circumstances mentioned in sub-paragraph (1) above becomes entitled to a deduction as there mentioned, section 703 shall apply in relation to any tax advantage obtained or obtainable in consequence of that deduction by another company by way of group relief as if obtained or obtainable by the other company in circumstances falling within sub-paragraph (1) above.

OR

- (C) (1) That the person in question receives, in consequence of a transaction whereby any other person—
- (a) subsequently receives, or has received, an abnormal amount by way of dividend; or
  - (b) subsequently becomes entitled, or has become entitled, to a deduction as mentioned in paragraph B(1) above, a consideration which either—
    - (i) is, or represents the value of, assets which are (or apart from anything done by the company in question would have been) available for distribution by way of dividend, or
    - (ii) is received in respect of future receipts of the company, or
    - (iii) is, or represents the value of, trading stock of the company,

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and the person in question so receives the consideration that he does not pay or bear tax on it as income.

- (2) The assets mentioned in sub-paragraph (1) above do not include assets which (while of a description which under the law of the country in which the company is incorporated is available for distribution by way of dividend) are shown to represent a return of sums paid by subscribers on the issue of securities.

OR

- (D) (1) That in connection with the distribution of profits of a company to which this paragraph applies, the person in question so receives as is mentioned in paragraph C(1) above such a consideration as is therein mentioned.
- (2) The companies to which this paragraph applies are—
- (a) any company under the control of not more than five persons, and
  - (b) any other company which does not satisfy the condition that its shares or stocks or some class thereof (disregarding debenture stock, preferred shares or preferred stock), are authorised to be dealt in on the Stock Exchange, and are so dealt in (regularly or from time to time),
- so, however, that this paragraph does not apply to a company under the control of one or more companies to which this paragraph does not apply.
- (3) Subsections (2) to (6) of section 416 shall apply for the purposes of this paragraph.

OR

- (E) (1) That in connection with the transfer directly or indirectly of assets of a company to which paragraph D above applies to another such company, or in connection with any transaction in securities in which two or more companies to which paragraph D above applies are concerned, the person in question receives non-taxable consideration which is or represents the value of assets available for distribution by such a company, and which consists of any share capital or any security (as defined by section 254(1)) issued by such a company.
- (2) So far as sub-paragraph (1) above relates to share capital other than redeemable share capital, it shall not apply unless and except to the extent that the share capital is repaid (in a winding-up or otherwise), and, where section 703 applies to a person by virtue of sub-paragraph (1) above on the repayment of any share capital, any assessment to tax under subsection (3) of that section shall be an assessment to tax for the year in which the share capital is repaid.
- (3) In this paragraph—
- “assets available for distribution” means assets which are, or apart from anything done by the company in question would have been, available for distribution by way of dividend, or trading stock of the company;
  - “non-taxable”, in relation to a person receiving consideration, means that the recipient does not pay or bear tax on it as income (apart from the provisions of this Chapter);
  - “share” includes stock and any other interest of a member in a company;

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and the references in sub-paragraph (2) above to the repayment of share capital include references to any distribution made in respect of any shares in a winding-up or dissolution of the company.

#### **Marginal Citations**

**M4** Source—1970 s.461; 1973 s.54, Sch.11 2(a), (b)

### **705 Appeals against Board’s notices under section 703.**

- (1) <sup>M5</sup>Any person to whom notice has been given under section 703(3) may within 30 days by notice to the Board appeal to the Special Commissioners on the grounds that section 703 does not apply to him in respect of the transaction or transactions in question, or that the adjustments directed to be made are inappropriate.
- (2) If he or the Board are dissatisfied with the determination of the Special Commissioners he or they may, on giving notice to the clerk to the Special Commissioners within 30 days after the determination, require the appeal to be re-heard by the tribunal, and the Special Commissioners shall transmit to the tribunal any document in their possession which was delivered to them for the purposes of the appeal.
- (3) Where notice is given under subsection (2) above, the tribunal shall re-hear and determine the appeal and shall have and exercise the same powers and authorities in relation to the appeal as the Special Commissioners might have and exercise, and the determination of the tribunal thereon shall be final and conclusive.
- (4) Section 56 of the Management Act (statement of case for opinion of High Court etc.) shall apply with the necessary modifications in the case of any such rehearing and determination as it applies in the case of appeals to the General or Special Commissioners.
- (5) On an appeal under subsections (1) to (3) above the Special Commissioners or the tribunal shall have power to cancel or vary a notice under subsection (3) of section 703 or to vary or quash an assessment made in accordance with such a notice, but the bringing of an appeal or the statement of a case shall not affect the validity of a notice given or of any other thing done in pursuance of that subsection pending the determination of the proceedings.
- (6) <sup>M6</sup>A company on which a notice has been served under section 703(5) or (6) may within 30 days by notice to the Board appeal to the Special Commissioners on the ground that it is just and reasonable in the circumstances that the company should be treated, for the purposes specified in section 703(6), as having paid an amount of advance corporation tax or, as the case may require, a greater amount of advance corporation tax than is specified in the notice.
- (7) Notwithstanding that a company on which a notice has been served as mentioned in subsection (6) above has made no appeal under that subsection, the company—
  - (a) shall be entitled, to the same extent as the appellant, to receive notice of, and to appear and be heard in, any proceedings arising from the notice referred to in subsection (6) above, whether the proceedings are before the Special Commissioners, by way of further appeal or otherwise;

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- (b) if it does appear, shall be treated as a party to the proceedings and as having the same rights in respect of those proceedings and any decision made therein as the appellant; and
- (c) whether or not it so appears, shall be bound by any order made in any such proceedings;

and no agreement under section 54 of the Management Act (settling of appeals by agreement) shall have effect except with the consent of each company which, by virtue of this subsection, would have been entitled to appear and be heard on the appeal if it had been proceeded with.

- (8) On an appeal under subsection (6) above, the Special Commissioners—
  - (a) may cancel or vary any notice served under section 703(5), or
  - (b) if no such notice was served, may by order make any provision which could have been made by the Board in such a notice.

#### Marginal Citations

**M5** Source—1970 s.462

**M6** Source—1970 s.462A; 1973 Sch.11 3

VALID FROM 01/01/1994

#### [<sup>F3</sup>705A Statement of case by tribunal for opinion of High Court.

- (1) Immediately after the determination by the tribunal of an appeal re-heard by them under section 705 of this Act, the appellant or the Board, if dissatisfied with the determination as being erroneous in point of law, may declare his or their dissatisfaction to the tribunal.
- (2) The appellant or the Board, as the case may be, having declared his or their dissatisfaction, may, within thirty days after the determination, by notice in writing require the tribunal to state and sign a case for the opinion of the High Court.
- (3) The party requiring the case shall pay to the tribunal a fee of £25 for and in respect of the same, before he is entitled to have the case stated.
- (4) The case shall set forth the facts and the determination of the tribunal, and the party requiring it shall transmit the case, when stated and signed, to the High Court, within thirty days after receiving the same.
- (5) At or before the time when he transmits the case to the High Court, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party.
- (6) The High Court shall hear and determine any question of law arising on the case, and may reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the tribunal with the Court's opinion on it, or make such other order in relation to the matter as the Court thinks fit.
- (7) The High Court may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.

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- (8) Subject to subsection (9) below and to Part II of the Administration of Justice Act 1969 (appeal from High Court to House of Lords), an appeal shall, in England and Wales, lie from the decision of the High Court to the Court of Appeal and thence to the House of Lords.
- (9) No appeal shall lie to the House of Lords from the Court of Appeal unless leave has been given under and in accordance with section 1 of the Administration of Justice (Appeals) Act 1934.
- (10) Subject to subsection (11) below, where the determination of the tribunal is in respect of an assessment made in accordance with a notice under subsection (3) of section 703, then notwithstanding that a case has been required to be stated or is pending before the High Court in respect of the determination, tax shall be paid in accordance with the determination.
- (11) If the amount charged by the assessment is altered by the order or judgment of the High Court, then—
- (a) if too much tax has been paid the amount overpaid shall be refunded with such interest, if any, as the High Court may allow; or
  - (b) if too little tax has been charged, the amount undercharged shall be due and payable at the expiration of a period of thirty days beginning with the date on which the Board issue to the other party a notice of the total amount payable in accordance with the order or judgment of that Court.
- (12) All matters within the jurisdiction of the High Court under this section shall be assigned in Scotland to the Court of Session sitting as the Court of Exchequer (references in this section to the High Court being construed accordingly); and an appeal shall lie from the decision under this section of the Court of Session, as the Court of Exchequer in Scotland, to the House of Lords.]

#### Textual Amendments

- F3** Ss. 705A, 705B inserted (1.1.1994) by [The General and Special Commissioners \(Amendment of Enactments\) Regulations 1994 \(S.I. 1994/1813\)](#), reg. 1(1), **Sch. 1 para. 24**

VALID FROM 01/01/1994

#### <sup>F3</sup>705B Proceedings in Northern Ireland.

- (1) A case which is stated by the tribunal under section 705A in proceedings in Northern Ireland shall be a case for the opinion of the Court of Appeal in Northern Ireland, and the Taxes Acts (as defined in section 118(1) of the Management Act <sup>F4</sup> shall have effect as if that section applied in relation to such proceedings—
- (a) with the substitution for references to the High Court of references to the Court of Appeal in Northern Ireland;
  - (b) with the omission of subsections (4), (5), (8) and (9) of that section.
- (2) The procedure relating to the transmission of the case to, and the hearing and determination of the case by, the Court of Appeal in Northern Ireland shall be that for the time being in force in Northern Ireland as respects cases stated by a county



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court in exercise of its general jurisdiction, and an appeal shall lie from the Court of Appeal to the House of Lords in accordance with section 42 of the Judicature (Northern Ireland) Act 1978.

(3) Where in proceedings in Northern Ireland an application is made for a case to be stated by the tribunal under this section, the case must be settled and sent to the applicant as soon after the application as is reasonably practicable.

(4) For the purposes of this section “proceedings in Northern Ireland” means proceedings as respects which the place given by the rules in Schedule 3 to the Management Act is in Northern Ireland.]

#### Textual Amendments

**F3** Ss. 705A, 705B inserted (1.1.1994) by [The General and Special Commissioners \(Amendment of Enactments\) Regulations 1994 \(S.I. 1994/1813\)](#), reg. 1(1), [Sch. 1 para. 24](#)

**F4** The definition of “the Taxes Act” in section 118(1) was amended by paragraph 32(d) of Schedule 8 to the [Development Land Tax Act 1976 \(c.24\)](#), [paragraph 8](#) of Schedule 7 to the [Capital Gains Tax Act 1979 \(c.14\)](#), [Schedule 31](#) to the Income and Corporation Taxes Act 1988, and paragraph 2(11)(b) of Schedule 10 to the [Taxation of Chargeable Gains Act 1992 \(c.12\)](#).

## 706 The tribunal.

<sup>M7</sup>For the purposes of this Chapter the tribunal shall consist of—

- (a) a chairman, appointed by the Lord Chancellor, and
- (b) two or more persons appointed by the Lord Chancellor as having special knowledge of and experience in financial or commercial matters.

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

**C2** See—1970(M) s.6(1)—*declaration to be made by member of tribunal on appointment*. 1989 s.182—*disclosure of information (in Part II Vol.5)*.

#### Marginal Citations

**M7** Source—1970 s.463; 1982 Sch.21 3(1)

## 707 Procedure for clearance in advance.

<sup>M8</sup>(1) The following provisions shall have effect where in pursuance of this section a person furnishes to the Board particulars of a transaction or transactions effected or to be effected by him, that is to say—

- (a) if the Board are of opinion that the particulars, or any further information furnished in pursuance of this paragraph, are not sufficient for the purposes of this section, they shall within 30 days of the receipt thereof notify to that person what further information they require for those purposes, and unless that further information is furnished to the Board within 30 days from the notification, or such further time as the Board may allow, they shall not be required to proceed further under this section;
- (b) subject to paragraph (a) above, the Board shall within 30 days of the receipt of the particulars, or, where that paragraph has effect, of all further

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information required, notify that person whether or not they are satisfied that the transaction or transactions as described in the particulars were or will be such that no notice under section 703(3) ought to be given in respect of it or them;

and, subject to the following provisions of this section, if the Board notify him that they are so satisfied, section 703 shall not apply to him in respect of that transaction or those transactions.

- (2) If the particulars, and any further information given under this section with respect to any transaction or transactions, are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the Board, any notification given by the Board under this section shall be void.
- (3) In no event shall the giving of a notification under this section with respect to any transaction or transactions prevent section 703 applying to a person in respect of transactions which include that transaction or all or some of those transactions and also include another transaction or other transactions.

#### Marginal Citations

**M8** Source—1970 s.464

### 708 Power to obtain information.

<sup>M9</sup>Where it appears to the Board that by reason of any transaction or transactions a person may be a person to whom section 703 applies, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether a notice under section 703(3) should be given in respect of him.

#### Marginal Citations

**M9** Source—1970 s.465

### 709 Meaning of “tax advantage” and other expressions.

- (1) <sup>M10</sup>In this Chapter “tax advantage” means a relief or increased relief from, or repayment or increased repayment of, tax, or the avoidance or reduction of a charge to tax or an assessment to tax or the avoidance of a possible assessment thereto, whether the avoidance or reduction is effected by receipts accruing in such a way that the recipient does not pay or bear tax on them, or by a deduction in computing profits or gains.
- (2) <sup>M11</sup>In this Chapter—
  - “company” includes any body corporate,
  - “securities”—
    - (a) includes shares and stock, and

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- (b) in relation to a company not limited by shares (whether or not it has a share capital) includes also a reference to the interest of a member of the company as such, whatever the form of that interest;
- “trading stock” has the same meaning as in section 100(1);
- “transaction in securities” includes transactions, of whatever description, relating to securities, and in particular—
- (i) the purchase, sale or exchange of securities;
  - (ii) the issuing or securing the issue of, or applying or subscribing for, new securities;
  - (iii) the altering, or securing the alteration of, the rights attached to securities;
- and references to dividends include references to other qualifying distributions and to interest.
- (3) In section 704—
- (a) references to profits include references to income, reserves or other assets;
  - (b) references to distribution include references to transfer or realisation (including application in discharge of liabilities); and
  - (c) references to the receipt of consideration include references to the receipt of any money or money’s worth.
- (4) For the purposes of section 704 an amount received by way of dividend shall be treated as abnormal if the Board, the Special Commissioners or the tribunal, as the case may be, are satisfied—
- (a) in the case of a dividend at a fixed rate, that it substantially exceeds the amount which the recipient would have received if the dividend had accrued from day to day and he had been entitled only to so much of the dividend as accrued while he held the securities, so however that an amount shall not be treated as abnormal by virtue only of this paragraph if during the six months beginning with the purchase of the securities the recipient does not sell or otherwise dispose of, or acquire an option to sell, any of those securities or any securities similar to those securities; or
  - (b) in any case, that it substantially exceeds a normal return on the consideration provided by the recipient for the relevant securities, that is to say, the securities in respect of which the dividend was received and, if those securities are derived from securities previously acquired by the recipient, the securities which were previously acquired.
- (5) For the purposes of subsection (4)(a) above securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred, and for those purposes rights guaranteed by the Treasury shall be treated as rights against the Treasury.
- (6) For the purposes of subsection (4)(b) above—
- (a) if the consideration provided by the recipient for any of the relevant 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 securities, the recipient shall be taken to have provided for those securities consideration equal to their market value at the time he acquired them; and

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- (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 that the recipient first acquired any of the relevant securities and to any dividends and other distributions made in respect of them during that time.

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

**C3** *Definition applied for purposes of 1990 Sch.10—convertible securities.*

**Marginal Citations**

**M10** Source—1970 s.466(1); 1973 Sch.11 4

**M11** Source—1970 s.467; 1973 Sch.11 5

## CHAPTER II

### TRANSFERS OF SECURITIES

*Transfers with or without accrued interest: introductory*

#### **710 Meaning of “securities”, “transfer” etc. for purposes of sections 711 to 728.**

- (1) <sup>M12</sup>This section has effect for the interpretation of sections 711 to 728.
- (2) “Securities” does not [<sup>F5</sup>, except as provided by subsection (2A) below,] include shares in a company but, subject to subsection (3) below, includes any loan stock or similar security—
- (a) whether of the government of the United Kingdom, any other government, any public or local authority in the United Kingdom or elsewhere, or any company or other body; and
  - (b) whether or not secured, whether or not carrying a right to interest of a fixed amount or at a fixed rate per cent. of the nominal value of the securities, and whether or not in bearer form.

[<sup>F6</sup>(2A) “Securities” includes shares in a building society which are qualifying shares for the purposes of section 64(3E) of the Finance Act 1984 (qualifying corporate bonds).]

- (3) “Securities” does not include—
- (a) securities on which the whole of the return is a distribution by virtue of section 209(2)(e)(iv) and (v);
  - (b) national savings certificates (including Ulster Savings Certificates);
  - (c) war savings certificates;
  - (d) certificates of deposit (within the meaning of section 56(5));
  - (e) any security which fulfils the following conditions, namely, it is redeemable, the amount payable on its redemption exceeds its issue price, and no return other than the amount of that excess is payable on it.
- (4) Securities are to be taken to be of the same kind if they are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.

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- (5) <sup>M13</sup> “Transfer”, in relation to securities, means transfer by way of sale, exchange, gift or otherwise.
- (6) <sup>M14</sup> Where an agreement for the transfer of securities is made, they are transferred, and the person to whom they are agreed to be transferred becomes entitled to them, when the agreement is made and not on a later transfer made pursuant to the agreement; and “entitled”, “transfer” and cognate expressions shall be construed accordingly.
- (7) <sup>M15</sup> A person holds securities—
- at a particular time if he is entitled to them at the time;
  - on a day if he is entitled to them throughout the day or he becomes and does not cease to be entitled to them on the day.
- (8) <sup>M16</sup> A person acquires securities when he becomes entitled to them.
- (9) <sup>M17</sup> Where—
- one individual holds securities at a particular time, and
  - any interest on them would, if it became payable at that time, be treated for the purposes of the Tax Acts as part of another individual’s income,
- then, for the purposes of section 715(1)(b) and section 715(2)(b) so far as relating to section 715(1)(b), each of them shall be treated as holding at that time the securities which the other holds as well as those which he actually holds.
- (10) <sup>M18</sup> Where in Scotland two or more persons carry on a trade or business in partnership, any partnership dealings shall be treated as dealings by the partners and not by the firm as such and the partners as being entitled to securities held by the firm.
- (11) <sup>M19</sup> The nominal value of securities is—
- where the interest on them is expressed to be payable by reference to a given value, that value; and
  - in any other case, the price of the securities when they were issued.
- (12) <sup>M20</sup> Where apart from this subsection the nominal value of securities would be a value (“the foreign value”) expressed in a currency other than sterling, then, for the purposes of section 715, their nominal value on a particular day is the sterling equivalent on that day of the foreign value.
- For the purposes of this subsection the sterling equivalent of a value on a particular day is the sterling equivalent calculated by reference to the London closing rate of exchange for that day.
- (13) <sup>M21</sup> Where there is a conversion of securities then,—
- the person who was entitled to them immediately before the conversion shall be treated as transferring them on the day of the conversion (if there is no actual transfer); and
  - the interest period in which the conversion is made shall be treated as ending on the day on which it would have ended had the conversion not been made.
- In this subsection “conversion” means a conversion within the meaning of section 82 of the 1979 Act.
- (14) <sup>M22</sup> In relation to an underwriting member of Lloyd’s, “business” and “premiums trust fund” have the meanings given by section 457.

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### Textual Amendments

- F5** Words in s. 710(2) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 51, **Sch. 10 para. 2(2)(4)**  
**F6** S. 710(2A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 51, **Sch. 10 para. 2(3)(4)**

### Marginal Citations

- M12** Source—1985 Sch.23 1  
**M13** Source—1985 Sch.23 2(2)  
**M14** Source—1985 Sch.23 2(3), (4)  
**M15** Source—1985 Sch.23 2(5), (6)  
**M16** Source—1985 Sch.23 2(7)  
**M17** Source—1985 Sch.23 2(8), (9)  
**M18** Source—1985 Sch.23 2(10)  
**M19** Source—1985 Sch.23 5  
**M20** Source—1985 Sch.23 10(6), (7)  
**M21** Source—1985 Sch.23 14(1), (3), (4)  
**M22** Source—1985 Sch.23 21

## 711 Meaning of “interest”, “transfers with or without accrued interest” etc.

- (1) <sup>M23</sup>This section has effect for the interpretation of sections 710 and 712 to 728.
- (2) An interest payment day, in relation to securities, is a day on which interest on them is payable; and, in a case where a particular payment of interest may be made on one of a number of days, the interest is for the purposes of this subsection payable on the first of those days.
- (3) Subject to subsection (4) below, the following are interest periods in relation to securities—
  - (a) the period beginning with the day following that on which they are issued and ending with the first interest payment day to fall;
  - (b) the period beginning with the day following one interest payment day and ending with the next to fall.
- (4) A period which would (apart from this subsection) be an interest period exceeding 12 months (“a long period”) is not an interest period, but the following shall apply to it—
  - (a) the period of 12 months beginning with the day on which it begins is an interest period;
  - (b) each successive period (if any) of 12 months falling within it is an interest period;
  - (c) any period of it which remains after applying paragraphs (a) and (b) above is an interest period.
- (5) Securities are transferred with accrued interest if they are transferred with the right to receive interest payable on—
  - (a) the settlement day, if that is an interest payment day; or
  - (b) the next (or first) interest payment day to fall after the settlement day, in any other case;

and they are transferred without accrued interest if they are transferred without that right.

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- (6) <sup>M24</sup>Where section 710(13), 715(3), 720(4), 721(1), [<sup>F7</sup>722(1) or (2) or 724(1A)] applies, the transfer shall be treated as made with accrued interest if the person treated as making the transfer was entitled to receive in respect of the securities interest payable on—
- (a) the settlement day, if that is an interest payment day; or
  - (b) the next (or first) interest payment day to fall after that day, in any other case;
- and they shall be treated as transferred without accrued interest if he was not so entitled.
- (7) <sup>M25</sup>The interest applicable to securities for an interest period is, subject to subsection (8) below, the interest payable on them on the interest payment day with which the period ends.
- (8) In the case of a period which is an interest period by virtue only of subsection (4) above or section 725(9)—
- (a) the interest applicable to securities for the period is the interest payable on them on the interest payment day with which the long or straddling period concerned ends; and
  - (b) section 713(6) shall have effect as if the references to the period were to the long or straddling period concerned.
- (9) “Interest” includes dividends and any other return (however described) except a return consisting of an amount by which the amount payable on a security’s redemption exceeds its issue price.

#### Textual Amendments

**F7** 1990 s.41 and Sch.6 para.9(2) on and after 24 May 1990 subject to the commencement provisions of paras.11 and 12. Previously “or 722(1) or (2)”.

#### Marginal Citations

**M23** Source—1985 Sch.23 3(1)-(5)  
**M24** Source—1985 Sch.23 14(2), 31(2), 12(2), 13(3), 7(2)  
**M25** Source—1985 Sch.23 3(6)-(8)

## 712 Meaning of “settlement day” for purposes of sections 711 to 728.

- <sup>M26</sup>(1) This section has effect to determine, for the purposes of sections 711 and 713 to 728, the settlement day in relation to a transfer of securities.
- (2) Where the securities are transferred in accordance with the rules of a recognised market, the settlement day is the day on which the transferee agrees to settle or, if he may settle on one of a number of days, the day on which he settles; and, where they are transferred otherwise, subsections (3) to (5) below apply.
- (3) Where the consideration for the transfer is money alone, and the transferee agrees to pay the whole of it on or before the next (or first) interest payment day to fall after an agreement for transfer is made, the settlement day is the day on which he agrees to make the payment or, if payment may be made on one of a number of days, or on a number of different days, the latest of them to fall.

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- (4) Where there is no consideration for the transfer, or the transfer is a transfer by virtue of sections 710(13), 715(3), 717(8), 720(4), 721 [<sup>F8</sup>, 722 and 724(1A)], the settlement day is the day on which the securities are transferred.
- (5) In any other case, the settlement day is such day as an inspector decides; and the jurisdiction of the General Commissioners or the Special Commissioners on any appeal shall include jurisdiction to review such a decision of the inspector.

#### Textual Amendments

- F8** 1990 s.41 and Sch.6 para.9(3) on and after 24 May 1990 subject to the commencement provisions of paras.11 and 12. Previously “and 722”.

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

- C4** Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(1)(2)  
 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(3)(4)  
 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(8)(10)  
 Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, ss. 176(4), 184(3)

#### Marginal Citations

- M26** Source—1985 Sch.23 4; 1986 Sch.17 3(2)

*Transfers with or without accrued interest: charge to tax and reliefs*

### 713 Deemed sums and reliefs.

- <sup>M27</sup>(1) Subject to sections 714 to 728, this section applies whether the securities in question are transferred before, on or after 6th April 1988; and in this section references to a period are references to the interest period in which the settlement day falls.
- (2) If securities are transferred with accrued interest—
- (a) the transferor shall be treated as entitled to a sum on them in the period of an amount equal to the accrued amount; and
  - (b) the transferee shall be treated as entitled to relief on them in the period of the same amount.
- (3) If securities are transferred without accrued interest—
- (a) the transferor shall be treated as entitled to relief on them in the period of an amount equal to the rebate amount; and
  - (b) the transferee shall be treated as entitled to a sum on them in the period of the same amount.
- (4) In subsection (2) above “the accrued amount” means—
- (a) if the securities are transferred under an arrangement by virtue of which the transferee accounts to the transferor separately for the consideration for the securities and for gross interest accruing to the settlement day, an amount equal to the amount (if any) of gross interest so accounted for; and
  - (b) in any other case, an amount equal to the accrued proportion of the interest applicable to the securities for the period.



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- (5) In subsection (3) above “the rebate amount” means—
- (a) if the securities are transferred under an arrangement by virtue of which the transferor accounts to the transferee for gross interest accruing from the settlement day to the next interest payment day, an amount equal to the amount (if any) of gross interest so accounted for; and
  - (b) in any other case, an amount equal to the rebate proportion of the interest applicable to the securities for the period.

- (6) In this section—
- (a) the accrued proportion is—

$$\frac{A}{B}$$

- (b) the rebate proportion is—

$$\frac{B - A}{B}$$

where—

A is the number of days in the period up to (and including) the settlement day, and

B is the number of days in the period.

- (7) <sup>M28</sup>For the purposes of subsection (2) above, in a case where the interest on the securities is payable in a currency other than sterling the accrued amount is to be determined as follows—
- (a) if subsection (4)(a) above applies and the sterling equivalent of the amount of gross interest there mentioned is shown in an agreement for transfer, the accrued amount is the sterling equivalent so shown;
  - (b) if subsection (4)(a) applies but paragraph (a) above does not, or if subsection (4)(b) above applies, the accrued amount is the sterling equivalent on the settlement day of the amount found by virtue of subsection (4)(a) or (b) (as the case may be).
- (8) For the purposes of subsection (3) above, in a case where the interest on the securities is payable in a currency other than sterling the rebate amount is to be determined as follows—
- (a) if subsection (5)(a) above applies and the sterling equivalent of the amount of gross interest there mentioned is shown in an agreement for transfer, the rebate amount is the sterling equivalent so shown;
  - (b) if subsection (5)(a) applies but paragraph (a) above does not, or if subsection (5)(b) above applies, the rebate amount is the sterling equivalent on the settlement day of the amount found by virtue of subsection (5)(a) or (b) (as the case may be).
- (9) <sup>M29</sup>For the purposes of subsections (7) and (8) above the sterling equivalent of an amount on a particular day is the sterling equivalent calculated by reference to the London closing rate of exchange for that day.

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

- C5** Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**  
Ss. 710-728 modified (27.7.1993 ) by 1993 c. 34, **s. 63(3)(4)**  
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**  
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4), 184(3)**
- C6** Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)
- C7** Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))
- C8** S. 713(2)(3) excluded (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 10 para. 4**; S.I. 2003/120, **art. 2, Sch.** (with arts. 3, 4 (as amended by S.I. 2003/333, **art. 14**))

#### Marginal Citations

- M27** Source—1985 s.73  
**M28** Source—1985 Sch.23 10(1)-(3)  
**M29** 1985 Sch.23 10(7)

## 714 Treatment of deemed sums and reliefs.

- <sup>M30</sup>(1) Subsection (2) below applies if a person is treated as entitled under section 713 to a sum on securities of a particular kind in an interest period, and either—
- (a) he is not treated as entitled under that section to relief on securities of that kind in the period; or
  - (b) the sum (or total sum) to which he is treated as entitled exceeds the amount (or total amount) of relief to which he is treated as entitled under that section on securities of that kind in the period.
- (2) The person shall be treated as receiving on the day the period ends annual profits or gains whose amount is (depending on whether subsection (1)(a) or (1)(b) above applies) equal to the sum (or total sum) to which he is treated as entitled or equal to the amount of the excess; and the profits or gains shall be chargeable to tax under Case VI of Schedule D for the chargeable period in which they are treated as received.
- (3) Subsection (4) below applies if a person is treated as entitled under section 713 to relief on securities of a particular kind in an interest period, and either—
- (a) he is not treated as entitled under that section to a sum on securities of that kind in the period; or
  - (b) the amount (or total amount) of relief to which he is treated as entitled exceeds the sum (or total sum) to which he is treated as entitled under that section on securities of that kind in the period.
- (4) The person shall be entitled to an allowance whose amount is (depending on whether subsection (3)(a) or (3)(b) above applies) equal to the amount (or total amount) of relief to which he is treated as entitled or equal to the amount of the excess; and subsection (5) below shall apply.
- (5) Any amount to which the person is entitled by way of interest which—
- (a) falls due on the securities at the end of the interest period, and
  - (b) is taken into account in computing tax charged for the chargeable period in which the interest period ends,

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shall for the purposes of the Tax Acts be treated as reduced by the amount of the allowance; but if the period is one which does not end with an interest payment day, he shall be treated as becoming, in the next interest period, entitled under section 713 to relief on the securities of an amount equal to the amount of the allowance.

- (6) Where, but for this subsection, a company would by virtue of subsection (2) above be treated as receiving profits or gains on a day which does not fall within an accounting period of the company, the profits or gains shall instead be treated as received by the company on the latest day of the interest period which does so fall.

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

- C9** Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(1)(2)  
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(3)(4)  
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(8)(10)  
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, ss. 176(4), 184(3)

**Marginal Citations**

- M30** Source—1985 s.74

## 715 Exceptions from sections 713 and 714

- (1) <sup>M31</sup>Section 713(2)(a) or (3)(a) (as the case may be) does not apply—
- (a) if the transferor carries on a trade and the transfer falls to be taken into account for the purposes of the Tax Acts in computing the profits or losses of that trade;
  - (b) if the transferor is an individual and on no day in the year of assessment in which the interest period ends or the previous year of assessment the nominal value of securities held by him exceeded £5,000;
  - (c) if the securities transferred form part of the estate of a deceased person, the transferor is that person's personal representative and on no day in the year of assessment in which the interest period ends or the previous year of assessment the nominal value of securities held by him as the deceased's personal representative exceeded £5,000;
  - (d) <sup>M32</sup>where—
    - (i) if the transferor became entitled to any interest on the securities transferred and applied it for charitable purposes only, exemption could be granted under section 505(1)(c) in respect of the interest;
    - (ii) if the transferor became entitled to any interest on the securities transferred and applied it for the purposes mentioned in paragraph (d) of section 505(1), exemption could be granted under that paragraph in respect of the interest;
  - (e) <sup>M33</sup>if the securities transferred are held on a disabled person's trusts, the transferor is trustee of the settlement and on no day in the year of assessment in which the interest period ends or the previous year of assessment the nominal value of securities held by him as trustee of the settlement exceeded £5,000;
  - (f) if the transferor does not fulfil the residence requirement for the chargeable period in which the transfer is made and is not a non-resident United Kingdom trader in that period;

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- (g) if the transferor is not ordinarily resident in the United Kingdom during the chargeable period in which the transfer occurs and, if he became entitled in the period to any interest on the securities transferred, it would not be liable to income tax by virtue of section 47;
  - (h) if the securities transferred are FOTRA securities, the transferor is not domiciled in the United Kingdom at any time in the chargeable period in which the transfer occurs, and he is either not ordinarily resident in the United Kingdom during that period or a non-resident United Kingdom trader in that period;
  - (j) if the transferor is an individual who, if he became entitled in the year of assessment in which the transfer occurs to any interest on the securities transferred, would be liable, in respect of the interest, to tax chargeable under Case IV or V of Schedule D and computed on the amount of sums received in the United Kingdom; or
  - (k) <sup>M34</sup>where, if the transferor became entitled to any interest on the securities transferred, exemption could be allowed under section 592(2) in respect of the interest.
- (2) <sup>M35</sup>Section 713(2)(b) or (3)(b) (as the case may be) does not apply if—
- (a) the transferee carries on a trade, and if at the time he acquired the securities he were to transfer them that transfer would fall to be taken into account for the purposes of the Tax Acts in computing the profits or losses of that trade; or
  - (b) any provision of subsection (1) above except paragraph (a) would apply if “transferor” read “transferee”.
- (3) <sup>M36</sup>If securities held on charitable trusts cease to be subject to charitable trusts the trustees shall be treated for the purposes of sections 710 to 728 as transferring the securities (in their capacity as charitable trustees) to themselves (in another capacity) at the time when the securities cease to be so subject.
- (4) <sup>M37</sup>For the purposes of this section a person fulfils the residence requirement for a chargeable period if he is resident in the United Kingdom during any part of the period or is ordinarily resident in the United Kingdom during the period.
- (5) For the purposes of this section a person is a non-resident United Kingdom trader in a chargeable period if during any part of it he is (though neither resident during any part of it nor ordinarily resident during it) carrying on a trade in the United Kingdom through a branch or agency and the securities transferred—
- (a) were situated in the United Kingdom and used or held for the purposes of the branch or agency at or before the time of the transfer (where the person concerned is a transferor); or
  - (b) were so situated at the time of the transfer and were acquired for use by or for the purposes of the branch or agency (where the person concerned is a transferee);
- but the provisions of this subsection relating to the situation of the securities in the United Kingdom do not apply where the person concerned is a company.
- (6) <sup>M38</sup>In any case where securities are transferred without accrued interest to a person (“the seller”) and a contract is made for the sale by the seller of securities of that kind (“the seller’s contract”) and the seller’s contract or any contract under which the securities are transferred to the seller is one in the case of which section 737 has effect and in relation to which the seller is the dividend manufacturer, then—

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- (a) where the nominal value of the securities subject to the seller's contract is greater than or equal to that of the securities transferred, the seller shall not be treated as entitled to any sum to which, but for this subsection, he would be treated as entitled under section 713(3)(b) on the securities transferred;
- (b) where the nominal value of the securities subject to the seller's contract is less than that of the securities transferred, any sum (or the aggregate of any sums) to which he is treated as entitled under section 713(3)(b) on the securities transferred shall be reduced by the amount of any part of the sum (or aggregate) attributable to securities ("relevant securities") of a nominal value equal to that of the securities subject to the seller's contract;

and for the purposes of sections 710 to 728 the securities which the seller contracts to sell shall not be treated as transferred by him (though treated as transferred to the person to whom he contracts to sell).

(7) In determining for the purposes of subsection (6)(b) above which of the securities transferred are relevant securities, those transferred to the seller earlier must be chosen before those transferred to him later.

(8) <sup>M39</sup>For the purposes of this section—

“disabled person's trusts” means trusts falling within paragraph 5(1) of Schedule 1 to the 1979 Act;

“branch or agency” has the meaning given by section 12(3) of the 1979 Act;

“FOTRA securities” means securities issued with the condition mentioned in section 22(1) of the <sup>M40</sup>Finance (No.2) Act 1931 (securities free of tax for residents abroad) as modified by virtue of section 60(1) of the <sup>M41</sup>Finance Act 1940;

and the place where securities are situated shall be determined in accordance with section 18(4) of the 1979 Act.

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

**C10** *These provisions are reproduced in Part II Vol.5.*

#### **Marginal Citations**

**M31** Source—1985 s.71(1) (a)-(c)

**M32** Source—1985 Sch.23 30(1), (4)

**M33** Source—1985 s.75(1)(d)-(h)

**M34** Source—1985 Sch.23 32(1)

**M35** Source—1985 s.75(2), Sch.23 30(2), (5), 32(2)

**M36** Source—1985 Sch.23 31(1)

**M37** Source—1985 s.75(3), (4)

**M38** Source—1985 Sch.23 43; 1986 Sch.17 5

**M39** Source—1985 s.75(5), (6)

**M40** 1931 c. 49.

**M41** 1940 c. 29.

## **716 Transfer of unrealised interest.**

<sup>M42</sup>(1) This section applies where securities are transferred (whether before or after 6th April 1988) with the right to receive interest (“unrealised interest”) payable on them on an interest payment day falling before the settlement day.

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- (2) Where the settlement day falls within an interest period, section 714 shall (subject to subsection (5) below) apply as if the transferor were entitled under section 713 to a sum on them in the period of an amount equal to the unrealised interest (in addition to any other sum to which he may be treated as so entitled).
- (3) Where the settlement day falls after the end of the last interest period in relation to the securities, the transferor shall be treated as receiving on the settlement day annual profits or gains of an amount equal to the unrealised interest; and the profits or gains shall be chargeable to tax under Case VI of Schedule D for the chargeable period in which they are treated as received.
- (4) Where the transferee receives the unrealised interest, and but for this subsection it would be taken into account in computing tax charged for the chargeable period in which the interest is received, it shall for the purposes of the Tax Acts be left out of account.
- (5) <sup>M43</sup>Section 715 shall apply for the purposes of this section as if—
- (a) in subsection (1)—
    - (i) the reference to section 713(2)(a) or (3)(a) were a reference to subsection (2) or (3) above; and
    - (ii) references to the year of assessment in which the interest period ends were references to the year in which the settlement day falls; and
  - (b) in subsection (2) the reference to section 713(2)(b) or (3)(b) were a reference to subsection (4) above.

Paragraph (b) above does not apply where the securities in question were transferred before 19th March 1986.

- (6) <sup>M44</sup>Where the unrealised interest is payable in a currency other than sterling its amount is for the purposes of this section the sterling equivalent on the settlement day of the amount it would be apart from this subsection; and for this purpose the sterling equivalent is to be calculated by reference to the London closing rate of exchange for the day.

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

- C11** Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(1)(2)  
 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(3)(4)  
 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(8)(10)  
 Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, ss. 176(4), 184(3)
- C12** Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), Sch. 13 para. 11 (with Sch. 13 para. 16, Sch. 15)
- C13** Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), s. 161(2)(a) (with s. 161(7))
- C14** S. 716 excluded (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), Sch. 10 para. 4; S.I. 2003/120, art. 2, Sch. (with arts. 3, 4 (as amended by S.I. 2003/333, art. 14))

#### **Marginal Citations**

- M42** Source—1985 Sch.23 15(1)-(4)  
**M43** Source—1985 Sch.23 15(5); 1986 Sch.17 2(2)  
**M44** Source—1985 Sch.23 15(8)

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**Status:** Point in time view as at 25/07/1991. This version of this part contains provisions that are not valid for this point in time.  
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## 717 Variable interest rate.

- <sup>M45</sup>(1) This section applies to securities other than securities falling within subsection (2) or (4) below.
- (2) Securities fall within this subsection if their terms of issue provide that throughout the period from issue to redemption (whenever redemption might occur) they are to carry interest at a rate which falls into one, and one only, of the following categories—
- a fixed rate which is the same throughout the period;
  - a rate which bears to a standard published base rate the same fixed relationship throughout the period;
  - a rate which bears to a published index of prices the same fixed relationship throughout the period.
- (3) In subsection (2)(c) above “published index of prices” means the retail prices index or any similar general index of prices which is published by, or by an agent of, the government of any territory outside the United Kingdom.
- (4) Securities fall within this subsection if they are deep discount securities and the rate of interest for each (or their only) interest period is equal to or less than the yield to maturity.
- (5) In subsection (4) above “deep discount securities” and “yield to maturity” have the same meanings as in Schedule 4; and for the purposes of that subsection the rate of interest for an interest period is, in relation to securities, the rate of return (expressed as a percentage) attributable to the interest applicable to them for the interest period.
- (6) Subsections (7) to (11) below apply if securities to which this section applies are transferred at any time between the time they are issued and the time they are redeemed.
- (7) If the securities are transferred without accrued interest they shall be treated for the purposes of sections 710 to 728 as transferred with accrued interest.
- (8) The person entitled to the securities immediately before they are redeemed shall be treated for the purposes of those sections as transferring them with accrued interest on the day they are redeemed.
- (9) Where there is a transfer as mentioned in subsection (6) above or by virtue of subsection (8) above, section 713 shall have effect with the omission of subsection (2) (b) and with the substitution for subsections (3) to (6) of the following subsection—
- “(3) In subsection (2) above “the accrued amount” means such amount (if any) as an inspector decides is just and reasonable; and the jurisdiction of the General Commissioners or the Special Commissioners on any appeal shall include jurisdiction to review such a decision of the inspector.”
- (10) Subsection (11) below applies where there is a transfer by virtue of subsection (8) above and the settlement day in relation to the transfer falls after the end of a period which would (by virtue of section 711(3) and (4) and apart from this subsection) be the only or last interest period in relation to the securities.
- (11) For the purposes of sections 710 to 728 the period beginning with the day following that interest period and ending with the settlement day shall be treated as an interest period in relation to the securities; and section 711(4) shall not apply to it.



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

- C15** Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. **63(1)(2)**  
 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. **63(3)(4)**  
 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. **63(8)(10)**  
 Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4), 184(3)**

#### Marginal Citations

- M45** Source—1985 Sch.23 15A, 15B, 15C; 1986 Sch.17 3

### 718 Interest in default.

<sup>M46</sup>(1) This section applies where, because of any failure to fulfil the obligation to pay interest on securities, the value (on a day mentioned in section 711(7) or (8)(a), as the case may be) of the right to receive the interest payable on them on that day is less than the interest so payable.

(2) Section 711(7) or (8)(a), as the case may be, shall be construed as if the reference to that interest were to an amount equal to that value.

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

- C16** Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. **63(1)(2)**  
 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. **63(3)(4)**  
 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. **63(8)(10)**  
 Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4), 184(3)**
- C17** Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)
- C18** Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), s. **161(2)(a)** (with s. 161(7))

#### Marginal Citations

- M46** Source—1985 Sch.23 15A, 15B, 15C; 1986 Sch.17 3

### 719 Unrealised interest in default

<sup>M47</sup>(1) Where securities are transferred as mentioned in section 716(1) and, because of any failure to fulfil the obligation to pay interest on them, the value (on the day of the transfer) of the right to receive the unrealised interest is less than the amount of the unrealised interest, section 716 shall have effect as modified by subsections (2) to (4) below.

(2) In subsections (2) and (3) for “the unrealised interest” there shall be substituted “amount A”.

(3) For subsection (4) there shall be substituted—

“(4) Where the transferee receives an amount by way of the unrealised interest (amount B) and that amount falls to be taken into account in computing tax charged for the chargeable period in which it is received, it shall for the



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purposes of the Tax Acts be treated as reduced by an amount (amount C) equal to—

- (a) nil, if the amounts have been previously received by the transferee by way of the unrealised interest and their aggregate is equal to or greater than the value (on the day of the transfer to the transferee) of the right to receive the unrealised interest;
- (b) amount B, if that value is equal to or greater than amount B (aggregated with other amounts previously so received, if any);
- (c) that value, if no amount has been previously so received and that value is less than amount B; or
- (d) so much of that value as exceeds the aggregate of amounts previously so received, in any other case.”.

(4) The following shall be substituted for subsection (6)—

- “(6) In this section “amount A” means, in a case where the transferor acquired the securities on or after 28th February 1986 with the right to received unrealised interest—
  - (a) an amount equal to amount D less amount E; or
  - (b) if amount D is equal to or less than amount E, nil.
- (7) In this section “amount A” means, in a case not falling within subsection (6) above, an amount equal to amount D.
- (8) In this section “amount D” means an amount equal to the value (on the day of the transfer by the transferor) of the right to receive the unrealised interest.
- (9) In this section “amount E” means, in a case where the transferor (as transferee) has received in respect of the securities an amount or amounts falling within subsection (4) above—
  - (a) an amount equal to amount F less the total received; or
  - (b) if amount F is equal to or less than the total received, nil.
- (10) In this section “amount E” means, in any other case, an amount equal to amount F.
- (11) In this section “amount F” means an amount equal to the value (on the day of the transfer to the transferor) of the right to receive the unrealised interest.
- (12) In determining for the purposes of this section which securities of a particular kind a person has transferred, he is to be taken to have transferred securities of that kind which he acquired later before securities of that kind which he acquired earlier.
- (13) Where the unrealised interest is payable in a currency other than sterling—
  - (a) any amount received by way of the interest is for the purposes of this section the sterling equivalent on the day it is received of the amount it would be apart from this subsection; and
  - (b) the value (on the day of a transfer) of the right to receive the interest is for the purposes of this section the sterling equivalent (on that day) of the value it would be apart from this subsection;and for this purpose the sterling equivalent is to be calculated by reference to the London closing rate of exchange for the day concerned.”

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

- C19** Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(1)(2)  
 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(3)(4)  
 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(8)(10)  
 Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, ss. 176(4), 184(3)
- C20** Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), Sch. 13 para. 11 (with Sch. 13 para. 16, Sch. 15)
- C21** Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), s. 161(2)(a) (with s. 161(7))

#### **Marginal Citations**

- M47** Source—1985 Sch.23 15A, 15B, 15C; 1986 Sch.17 3

### *Transfers with or without accrued interest: supplemental*

#### **720 Nominees, trustees etc.**

- (1) <sup>M48</sup>Where securities are transferred by or to a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability, or for two or more persons who are or would be jointly so entitled, sections 713, 715 and 716 shall apply as if references to the transferor or the transferee (as the case may be) were to the person or persons for whom the nominee or trustee disposes or acquires.
- (2) <sup>M49</sup>It is hereby declared that for the purposes of subsection (1) above—
- (a) securities are transferred by a person as trustee for another person absolutely entitled as against the trustee if that other person has immediately before the transfer the exclusive right to direct how the securities shall be dealt with, subject only to satisfying any outstanding charge, lien or other right of the trustee to resort to the securities for payment of duty, taxes, costs or other outgoings; and
  - (b) securities are transferred to a person as trustee for another person so entitled if that other person has that right immediately after the transfer.
- (3) <sup>M50</sup>An underwriting member of Lloyd's shall be treated for the purposes of sections 710 to 728 as absolutely entitled as against the trustees to the securities forming part of his premiums trust fund, his special reserve fund (if any) and any other trust fund required or authorised by the rules of Lloyd's or required by the underwriting agent through whom his business or any part of it is carried on, to be kept in connection with the business.
- (4) <sup>M51</sup>Where a person who is entitled to securities becomes trustee of them, he shall be treated for the purposes of sections 710 to 728 as transferring them (in a capacity other than trustee) to himself (in his capacity as trustee), or to himself and any other trustees, at the time he becomes trustee.
- (5) <sup>M52</sup>Annual profits or gains which by virtue of 714(2) or 716(3) are treated as received in a year of assessment by trustees shall be chargeable to income tax at a rate equal to the sum of the basic rate and the additional rate for that year.

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This subsection does not apply where the profits or gains are treated as received by the investment manager of a common investment fund for the time being designated as mentioned in section 328(1).

- (6) <sup>M53</sup>In any case where—
- (a) a trustee of a settlement is treated as receiving annual profits or gains under section 714(2), or
  - (b) a trustee of a settlement who is resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls would, at the end of the interest period, have been treated under section 714(2) as receiving annual profits or gains or annual profits or gains of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period,

Chapters II to IV of Part XV shall have effect as if the amount which the trustee is or would be treated as receiving were income (within Chapter II) or income arising under the settlement (within Chapter III or IV).

- (7) <sup>M54</sup>In any case where income of a trustee of a settlement who is resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls consists of interest which—
- (a) falls due at the end of the interest period; and
  - (b) would have been treated under section 714(5) as reduced by an allowance or an allowance of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period;

then, for the purposes of Chapters II to IV of Part XV, the interest shall be treated as being reduced by the amount of the allowance or by the additional amount (as the case may be).

- (8) <sup>M55</sup>In subsections (6) and (7) above—
- (a) “settlement” means settlement within the meaning of Chapter II, III or IV of Part XV (as the case may be); and
  - (b) references to a trustee of a settlement are, where there is no trustee of the settlement, to any person entitled to securities comprised in the settlement.

#### Marginal Citations

- M48** Source—1985 Sch.23 6(1), 15(6)  
**M49** Source—1985 Sch.23 6(2)  
**M50** Source—1985 Sch.23 22  
**M51** Source—1985 Sch.23 7(1)  
**M52** Source—1985 Sch.23 8(1), (2), (4); 1986 Sch.17 1(1)  
**M53** Source—1985 Sch.23 9(1), (2)  
**M54** Source—1985 Sch.23 9(3), (4)  
**M55** Source—1985 Sch.23 9(5)

## 721 Death.

- (1) <sup>M56</sup>Where an individual who is entitled to securities dies, he shall be treated for the purposes of sections 710 to 728 as transferring the securities to his personal representatives immediately before his death.

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- (2) Where the securities are transferred with accrued interest by the personal representatives to a legatee in the interest period in which the individual died—
  - (a) section 713 shall not apply to the transfer, and
  - (b) the transfer of the securities which the individual is treated as making by virtue of subsection (1) above shall be treated as made to the legatee (and not to the personal representatives).
- (3) In subsection (2) above “legatee” includes any person taking (whether beneficially or as trustee) under a testamentary disposition or on an intestacy or partial intestacy, including any person taking by virtue of an appropriation by the personal representatives in or towards satisfaction of a legacy or other interest or share in the deceased’s property.
- (4) In the case of an individual who dies in an interest period, section 714(2) shall have effect as if the reference to the day the period ends were to the day he dies.
- (5) <sup>M57</sup>Subsections (1) to (4) above do not apply where the individual concerned is an underwriting member of Lloyd’s and the securities concerned form part of a premiums trust fund, a special reserve fund or any other trust fund required or authorised by the rules of Lloyd’s or required by the underwriting agent through whom the individual’s business or any part of it is carried on, to be kept in connection with the business.
- (6) In a case where subsection (5) above applies the deceased’s personal representatives shall be treated for the purposes of sections 710 to 728 as the transferor or transferee in relation to transfers of securities as to which the deceased was the transferor or transferee (as the case may be) in the interest period in which he died.

#### **Marginal Citations**

**M56** Source—1985 Sch.23 12(1), (3)-(5)

**M57** Source—1985 Sch.23 27

## **722 Trading stock.**

- <sup>M58</sup>(1) Where securities acquired by a person otherwise than as trading stock of a trade carried on by him are appropriated by him for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise), he shall be treated for the purposes of sections 710 to 728 as transferring them otherwise than in the course of the trade and re-acquiring them in the course of the trade on the day the appropriation is made.
- (2) Where securities forming part of the trading stock of a person’s trade are appropriated by him for any other purpose, or are retained by him on his ceasing to carry on the trade, he shall be treated for the purposes of sections 710 to 728 as transferring them in the course of the trade and re-acquiring them otherwise than in the course of the trade on the day the appropriation is made or (as the case may be) he ceases to carry on the trade.

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

**C22** Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(1)(2)

Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(3)(4)

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Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(8)(10)

Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, ss. 176(4), 184(3)

**C23** Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), Sch. 13 para. 11 (with Sch. 13 para. 16, Sch. 15)

**C24** Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), s. 161(2)(a) (with s. 161(7))

#### Marginal Citations

**M58** Source—1985 Sch.23 (13) (1), (2)

VALID FROM 29/04/1996

#### <sup>F9</sup>722A Gilt strips: deemed transfer.

- (1) For the purposes of sections 710 to 728, where a gilt-edged security is exchanged by any person for strips of that security the security shall be deemed to have been transferred by that person.
- (2) Nothing in subsection (1) above shall have effect to cause any person to be treated as the transferee of any securities for the purposes of section 713(2)(b).
- (3) For the purposes of sections 710 to 728, where strips of gilt-edged securities are exchanged by any person for a single gilt-edged security consolidating those strips, that security shall be deemed to have been transferred to that person.
- (4) Nothing in subsection (3) above shall have effect to cause any person to be treated as the transferor of any securities for the purposes of section 713(2)(a).
- (5) In this section—  
“gilt-edged security” has the same meaning as in section 51A; and  
“strip” means anything which, within the meaning of section 47 of the <sup>M59</sup>Finance Act 1942, is a strip of a gilt-edged security.]

#### Textual Amendments

**F9** S. 722A inserted (29.4.1996) by Finance Act 1996 (c. 8), Sch. 40 para. 6

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

**C25** Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), Sch. 13 para. 11 (with Sch. 13 para. 16, Sch. 15)

#### Marginal Citations

**M59** 1942 c. 21.

#### 723 Foreign securities: delayed remittances

<sup>M60</sup>(1) This section applies where in an interest period a person is treated as entitled to a sum or sums under section 713(2)(a) in respect of a transfer or transfers of securities of a particular kind which are situated outside the United Kingdom.

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- (2) Subject to subsection (3) below, the amount of any annual profits or gains which the person is treated under section 714 as receiving on the day the period ends in respect of securities of that kind shall be reduced—
  - (a) if the amount of the sum or aggregate of the sums exceeds the amount of the profits or gains, to nil; or
  - (b) in any other case, by the amount of the sum or aggregate.
- (3) No reduction shall be made unless the person makes a claim and shows that the conditions in subsection (5) below are, so far as applicable, satisfied in the chargeable period in which the profits or gains are treated as received.
- (4) The claimant (or his personal representatives) shall be charged to tax under Case VI of Schedule D on the amount of the reduction for the chargeable period in which the conditions in subsection (5) below cease to be satisfied.
- (5) The conditions are—
  - (a) that the claimant was unable to remit the proceeds of the transfer or transfers to the United Kingdom;
  - (b) that the inability was due to the laws of the territory in which the securities are situated, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and
  - (c) that the inability was not due to any want of reasonable endeavours on the part of the claimant.
- (6) No claim under this section shall be made in respect of a transfer more than six years after the end of the interest period in which the transfer occurred.
- (7) The personal representatives of a deceased person may make any claim which he might have made under this section if he had not died.
- (8) For the purposes of this section the place where securities are situated shall be determined in accordance with section 18(4) of the 1979 Act.

#### **Marginal Citations**

**M60** Source—1985 Sch.23 11

#### **724 Insurance companies.**

- (1) <sup>M61</sup>The references in section 715(1)(a) and (2)(a) to computing the profits or losses of a trade shall not be taken as applying to a computation of income for the purposes of section 76(2).
- [<sup>F10</sup>(1A) If at any time securities held by an insurance company cease to be within one of the categories set out in section 440(4) and come within another of those categories, the company shall be treated for the purposes of sections 710 to 728 as transferring the securities to itself at that time.]
- (2) *Where an insurance company carrying on life assurance business is treated as receiving annual profits or gains under section 714(2) or 716(3) in respect of securities held as investments in connection with that business, the profits or gains shall be treated for the purposes of section 434(3) to (5) as if they were income from investments held in connection with that business.*<sup>F11</sup>

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- (3) <sup>M62</sup>Section 713(2)(a) or (3)(a) (as the case may be) shall not apply if the transferor is an insurance company [<sup>F12</sup>to the extent that the securities transferred are immediately before the transfer referable to a business the profits of which are computed in accordance with section 436 or 441.]
- (4) <sup>M63</sup>Section 713(2)(b) or (3)(b) (as the case may be) shall not apply [<sup>F13</sup>if the transferee is an insurance company to the extent that the securities transferred are immediately after the transfer referable to a business the profits of which are computed in accordance with section 436 or 441.]
- (5) <sup>M64</sup>Where an overseas life insurance company (within the meaning of section 431) is entitled to an allowance under section 714(4), section 714(5) and (6) shall not apply but subsections (6) and (7) below shall apply.
- (6) If the company is treated under section 714(2) as receiving annual profits or gains in an accounting period, the profits or gains shall be treated as reduced by any amount (“the deductible amount”) equal to the allowance or aggregate of the allowances, as the case may be, to which the company is entitled under section 714(4) in relation to an interest period or periods ending in the accounting period.
- (7) Where the deductible amount exceeds the amount of those annual profits or gains, the company may claim to have the excess treated as reducing any annual profits or gains the company is treated as receiving under section 714(2) in the company’s next accounting period or, if there is still an excess, the one after (and so on for future accounting periods).
- (8) Subsections (5) to (7) above do not apply to an overseas life insurance company if, by virtue of arrangements specified in an Order in Council under section 788, no charge to corporation tax under Case III of Schedule D arises under section 445 in respect of any income of the company.

#### Textual Amendments

**F10** 1990 s.41 and Sch.6 para.9(1) on and after 24 May 1990 subject to the commencement provisions of paras.11 and 12.

**F11** Repealed by 1990 s.132 and Sch.19 Part IV.

**F12** 1990 s.42 and Sch.7 para.4(a) for accounting periods beginning on or after 1 January 1990 (see para.10). Previously  
“and—(a) the transfer falls to be taken into account in computing its profits or losses for the purposes of section 436; or (b) if the company became entitled to any interest on the securities transferred, it would by virtue of section 441(1) be liable, in respect of the interest, to tax computed by reference to the amount of income received in the United Kingdom; or (c) if the company became entitled to any interest on the securities transferred and applied the interest for the purposes of its foreign life assurance fund, it would by virtue of section 441(2) not be liable to tax in respect of the interest.”

**F13** 1990 s.42 and Sch.7 para.4(b) for accounting periods beginning on or after 1 January 1990 (see para.10). Previously  
“if subsection (3) above would apply if in that subsection “transferor” read “transferee”.”.

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

**C26** S. 724(1A) excluded by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 para. 6(4)

#### Marginal Citations

**M61** Source—1985 Sch.23 16, 17

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**M62** Source—1985 Sch.23 18(1), 19(1), (4)

**M63** Source—1985 Sch.23 18(2), 19(2), (5)

**M64** Source—1985 Sch.23 20(2)-(6)

## **725 Lloyd’s underwriters.**

- (1) <sup>M65</sup>The securities forming part of a premiums trust fund at the beginning of 1st January of any year shall be treated for the purposes of sections 710 to 728 as transferred on that day to the trustees of the fund, and in relation to such a transfer, the settlement day is the day preceding that of the transfer (notwithstanding section 712).
- (2) The securities shall be treated as transferred with accrued interest if the trustees are entitled to receive in respect of them interest payable on—
  - (a) <sup>M66</sup>the day of the transfer, if that is an interest payment day, or
  - (b) the next (or first) interest payment day to fall after that day, in any other case; and they shall be treated as transferred without accrued interest if they are not so entitled.
- (3) Subsections (1) and (2) above do not apply as regards securities if the day preceding 1st January concerned is an interest payment day in relation to them.
- (4) <sup>M67</sup>The securities forming part of a premiums trust fund at the end of 31st December of any year shall be treated for the purposes of sections 710 to 728 as transferred on that day by the trustees of the fund, and in relation to such a transfer, the settlement day is the day of the transfer (notwithstanding section 712).
- (5) The securities shall be treated as transferred with accrued interest if the trustees are entitled to receive in respect of them interest payable on the next (or first) interest payment day to fall after the day of the transfer, and they shall be treated as transferred without accrued interest if they are not so entitled.
- (6) Subsections (4) and (5) above do not apply as regards securities if 31st December concerned is an interest payment day in relation to them.
- (7) <sup>M68</sup>Where securities are transferred by or to the trustees of a premiums trust fund, subsections (8) and (9) below shall have effect in relation to the trustees, though not in relation to the transferee or transferor (unless in turn constituting trustees of such a fund).
- (8) In subsection (9) below “straddling period” means a period which would (by virtue of section 711(3) and (4) and apart from subsection (9)) be in relation to the securities an interest period beginning on or before and ending after 31st December of any year.
- (9) For the purposes of sections 710 to 728 a straddling period is not an interest period, but—
  - (a) the period beginning with the day on which the straddling period begins and ending with 31st December concerned is an interest period; and
  - (b) the period beginning with the day following 31st December concerned and ending with the day with which the straddling period ends is an interest period.
- <sup>F14</sup>(10) Subsection (11) below applies where the following state of affairs exists at the beginning of 1st January of any year or the end of 31st December of any year—
  - (a) securities have been transferred by the trustees of a premiums trust fund in pursuance of an arrangement mentioned in section 129(1) or (2),



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- (b) the transfer was made to enable another person to fulfil a contract or to make a transfer,
  - (c) securities have not been transferred in return, and
  - (d) section 129(3) applies to the transfer made by the trustees.
- (11) The securities transferred by the trustees shall be treated for the purposes of subsections (1) to (6) above as if they formed part of the premiums trust fund at the beginning of 1st January concerned or the end of 31st December concerned (as the case may be).]

**Textual Amendments**

**F14** 1989 s.91(1) *in the case of transfers made by trustees after 18 August 1989*. (by virtue of S.I. 1989 No. 1299—in Part III Vol.5.)

**Marginal Citations**

- M65** Source—1985 Sch.23 24(1), (2)
- M66** Source—1985 Sch.23, 24(3), (4)
- M67** Source—1985 Sch.23 25
- M68** Source—1985 Sch.23 26

**F15** 726 .....

**Textual Amendments**

**F15** S. 726 repealed (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 123, Sch. 19 Pt. V, Note 6

**[726A** <sup>F16</sup>**New issues of securities.**

- (1) This section applies where—
- (a) securities (old securities) of a particular kind are issued by way of the original issue of securities of that kind,
  - (b) on a later occasion securities (new securities) of the same kind are issued,
  - (c) a sum (the extra return) is payable in respect of the new securities, by the person issuing them, to reflect the fact that interest is accruing on the old securities,
  - (d) the issue price of the new securities includes an element (whether or not separately identified) representing payment for the extra return, and
  - (e) the extra return is equal to the amount of interest payable for the relevant period on so many old securities as there are new (or, if there are more new securities than old, the amount of interest which would be so payable if there were as many old securities as new).
- (2) For the purposes of sections 710 to 728—
- (a) the new securities shall be treated as having been issued on the relevant day;
  - (b) they shall be treated as transferred to the person to whom they are in fact issued (though not treated as transferred by any person);

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- (c) the transfer shall be treated as a transfer with accrued interest and as made on the day on which the new securities are in fact issued;
  - (d) that day shall be treated as the settlement day (notwithstanding section 712); but this subsection is subject to subsection (7) below.
- (3) If the new securities are in fact issued under an arrangement by virtue of which the acquirer accounts to the issuer separately for the extra return mentioned in subsection (1) above and the rest of the issue price, in relation to the transfer mentioned in subsection (2)(b) above—
- (a) section 713(4) shall not apply, and
  - (b) for the purposes of section 713(2) the accrued amount shall be the amount found under subsection (4) or (5) below (as the case may be);
- and here “the acquirer” means the person to whom the new securities are in fact issued and “the issuer” means the person by whom they are in fact issued.
- (4) Subject to subsection (5) below, the amount is one equal to the amount (if any) of the extra return separately accounted for.
- (5) If the interest on the new securities is payable in a currency other than sterling, the amount is the sterling equivalent on the settlement day of the amount found under subsection (4) above; and for this purpose the sterling equivalent of an amount on the settlement day is the sterling equivalent calculated by reference to the London closing rate of exchange for that day.
- (6) If the new securities are in fact issued otherwise than as mentioned in subsection (3) above, section 713(4)(b) shall apply in relation to the transfer mentioned in subsection (2)(b) above.
- (7) If the new securities are securities to which section 717 applies (after applying subsection (2)(a) above) subsection (2)(b) to (d) above shall not apply.
- (8) For the purposes of this section the relevant period is the period beginning with the day following the relevant day and ending with the day on which the new securities are in fact issued.
- (9) For the purposes of this section the relevant day is—
- (a) the last (or only) interest payment day to fall in respect of the old securities before the day on which the new securities are in fact issued, or
  - (b) the day on which the old securities were issued, in a case where no interest payment day fell in respect of them before the day on which the new securities are in fact issued.]

#### **Textual Amendments**

**F16** S. 726A inserted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 54, Sch. 12 paras. 2, 5

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

**C27** Ss. 710-728 modified (27.7.1993) by [1993 c. 34, s. 63\(1\)\(2\)](#)  
 Ss. 710-728 modified (27.7.1993) by [1993 c. 34, s. 63\(3\)\(4\)](#)  
 Ss. 710-728 modified (27.7.1993) by [1993 c. 34, s. 63\(8\)\(10\)](#)  
 Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by [1993 c. 34, ss. 176\(4\), 184\(3\)](#)

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- C28** Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 13 para. 11](#) (with [Sch. 13 para. 16](#), [Sch. 15](#))
- C29** Ss. 711-728 modified (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [s. 161\(2\)\(a\)](#) (with s. 161(7))

## 727 Stock lending.

- <sup>M69</sup>(1) The effect of section 129(3) shall be disregarded in construing section 715(1)(a) and (2)(a).
- (2) Where securities are transferred in circumstances such that by virtue of section 149B(9) of the 1979 Act (capital gains tax exemption) any disposal and acquisition are disregarded for the purposes of capital gains tax, sections 713(2) and (3) and 716 shall not apply.

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### Modifications etc. (not altering text)

- C30** See S.I. No.1299 (in Part III Vol.5)—The Income Tax (Stock Lending) Regulations 1989.
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### Marginal Citations

- M69** Source—1985 Sch.23 32C; 1986 Sch.17 4

VALID FROM 01/05/1995

### [<sup>F17</sup>727A] Exception for sale and repurchase of securities.

- (1) Where securities are transferred under an agreement to sell them, and under the same or any related agreement the transferor or a person connected with him—
- (a) is required to buy back the securities, or
  - (b) acquires an option, which he subsequently exercises, to buy back the securities,
- section 713(2) and (3) and section 716 do not apply to the transfer by the transferor or the transfer back.
- (2) For the purposes of this section agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).
- (3) Section 839 (connected persons) applies for the purposes of this section.
- (4) References in this section to buying back securities include buying similar securities.
- For this purpose securities are similar if they entitle their holders—
- (a) to the same rights against the same persons as to capital and interest, and
  - (b) to the same remedies for the enforcement of those rights,
- notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.
- (5) For the purposes of this section—

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- (a) a person connected with the transferor who is required to buy securities sold by the transferor shall be treated as being required to buy the securities back, and
- (b) a person connected with the transferor who acquires an option to buy securities sold by the transferor shall be treated as acquiring an option to buy the securities back,
- notwithstanding that it was not he who sold them.]

#### Textual Amendments

**F17** S. 727A inserted (with effect in accordance with s. 79(3) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [s. 79\(1\)](#) (with s. 79(4))

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

**C31** S. 727A applied (with modifications) (2.1.1996) by [The Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 1995 \(S.I. 1995/3220\)](#), [regs. 1, 4](#)

**C32** S. 727A applied (with modifications) (2.1.1996) by [The Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 1995 \(S.I. 1995/3220\)](#), [regs. 1, 5](#)

**C33** Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 13 para. 11](#) (with [Sch. 13 para. 16](#), [Sch. 15](#))

**C34** Ss. 711-728 modified (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [s. 161\(2\)\(a\)](#) (with s. 161(7))

**C35** S. 727A(1) modified (1.1.1999) by [The European Single Currency \(Taxes\) Regulations 1998 \(S.I. 1998/3177\)](#), [regs. 1, 14](#)

## 728 Information.

<sup>M70</sup>(1) In order to obtain for the purposes of sections 710 to 727 particulars relating to securities, an inspector may by notice require a return under subsection (2) or (3) below.

(2) A member of the Stock Exchange, other than a market maker, may be required to make a return giving, in relation to any transactions effected by him in the course of his business in the period specified in the notice, such particulars as may be so specified.

In relation to transactions before 27th October 1986 this subsection shall have effect with the substitution of “jobber” for “market maker”.

(3) A person (other than a member of the Stock Exchange), who acts as an agent or broker in the United Kingdom in transactions in securities, may be required to make a return giving, in relation to any such transactions effected by him in the period specified in the notice, such particulars as may be so specified.

(4) No person shall be required under subsection (2) or (3) above to include in a return particulars of any transaction effected more than three years before the service of the notice requiring him to make the return.

(5) In order to obtain for the purposes of sections 710 to 727 particulars relating to securities, the Board or an inspector may by notice require any person in whose name any securities are registered to state whether or not he is the beneficial owner of those securities and, if he is not the beneficial owner of them or any of them, to furnish the name and address of the person or persons on whose behalf the securities are registered in his name.

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- (6) In this section “market maker”, in relation to securities, means a person who—
- (a) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of the kind concerned at a price specified by him; and
  - (b) is recognised as doing so by the Council of the Stock Exchange.
- (7) The Board may by regulations provide that—
- (a) subsections (2), (3) and (6)(a) above shall have effect as if references to the Stock Exchange were to any recognised investment exchange (within the meaning of the <sup>M71</sup>Financial Services Act 1986) or to any of those exchanges specified in the regulations; and
  - (b) subsection (6)(b) shall have effect as if the reference to the Council of the Stock Exchange were to the investment exchange concerned.
- (8) Regulations under subsection (7) above shall apply in relation to transactions effected on or after such day as may be specified in the regulations.

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

- C36** Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(1)(2)  
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(3)(4)  
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, s. 63(8)(10)  
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, ss. 176(4), 184(3)

**Marginal Citations**

- M70** Source—1985 Sch.23 44(1)-(5A); 1986 Sch.17 6  
**M71** 1986 c. 60.

*Other transfers of securities*

**729 Sale and repurchase of securities.**

- (1) <sup>M72</sup>Where the owner of any securities (“the owner”) agrees to sell or transfer those securities and by the same or any collateral agreement—
- (a) agrees to buy back or re-acquire the securities, or
  - (b) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities,
- then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the following provisions shall have effect—
- (i) the interest so payable shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of the Tax Acts to be the income of the owner and not to be the income of any other person; and
  - (ii) if the securities are of such a character that the interest payable in respect thereof may be paid without deduction of tax, the owner shall be chargeable to tax under Case VI of Schedule D in respect of the interest which is so deemed to be his income, but shall be entitled to credit for any tax which that income is shown to have borne.

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- (2) In relation to corporation tax—
- (a) subject to the provisions of the Tax Acts about distributions, interest deemed under subsection (1)(i) above to be the income of the owner shall be chargeable under Case VI of Schedule D, and
  - (b) subsection (1)(ii) above shall not apply.
- (3) The references in subsection (1) above to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.
- (4) Where any person carrying on a trade which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—
- (a) agrees to sell back or re-transfer the securities, or
  - (b) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities,
- then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade.
- (5) Subsection (4) above shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.
- (6) This section shall not apply to any income to which section 786(4) applies.
- (7) <sup>M73</sup>Subsections (1) and (2) above shall not apply where—
- (a) the securities are Eurobonds or foreign government stock; and
  - (b) the owner of the securities carries on a trade which consists wholly or partly in dealing in securities and the person who agrees to buy or acquire the securities carries on such a trade.
- (8) Subsection (4) above shall not apply where—
- (a) the securities are Eurobonds or foreign government stock; and
  - (b) the person from whom the person there mentioned agrees to buy or acquire the securities carries on a trade which consists wholly or partly in dealing in securities.
- (9) In subsections (7) and (8) above—
- “Eurobond” has the same meaning as in section 732(5); and
- “foreign government stock” means stock which is issued by a government other than that of the United Kingdom and is denominated in a currency other than sterling.
- (10) <sup>M74</sup>For the purposes of this section—
- (a) “interest” includes a dividend;
  - (b) “securities” includes stocks and shares, except securities which are securities for the purposes of sections 710 to 728; and

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- (c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.
- (11) <sup>M75</sup>The Board may by notice require any person to furnish them within such time as they may direct (not being less than 28 days), in respect of all securities of which he was the owner at any time during the period specified in the notice, such particulars as they consider necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities.
- (12) <sup>M76</sup>In any case where the owner agrees to sell or transfer before such day as the Board may by order appoint for the purposes of this section or the person referred to in subsection (4) above agreed to buy or acquire before that day—
- (a) subsections (1) and (2) above shall not apply if the owner’s agreement to sell or transfer constitutes a transfer to which section 713(2)(a) applies; and
  - (b) subsection (10)(b) above shall have effect with the omission of the words “except securities which are securities for the purposes of sections 710 to 728”.

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

**C37** By S.I. 1988 No.1002 (not reproduced) the appointed day is 9 June 1988.

**Marginal Citations**

- M72** Source—1970 s.469(1)-(6); 1971 Sch.6 70  
**M73** Source—1970 S.469(6A), (6B), (6C); 1986 Sch.18 1(1)  
**M74** Source—1970 s.469(7); 1986 Sch.18 1(4)  
**M75** Source—1970 s.469(8)  
**M76** Source—1986 Sch.18 1(5)

**730 Transfers of income arising from securities**

- <sup>M77</sup>(1) Where in any chargeable period the owner of any securities (“the owner”) sells or transfers the right to receive any interest payable (whether before or after the sale or transfer) in respect of the securities without selling or transferring the securities, then, for all the purposes of the Tax Acts, that interest, whether it would or would not be chargeable to tax apart from the provisions of this section—
- (a) shall be deemed to be the income of the owner or, in a case where the owner is not the beneficial owner of the securities and some other person (“a beneficiary”) is beneficially entitled to the income arising from the securities, the income of the beneficiary, and
  - (b) shall be deemed to be the income of the owner or beneficiary for that chargeable period, and
  - (c) shall not be deemed to be the income of any other person.
- (2) For the purposes of subsection (1) above, in the case of a sale or other realisation the proceeds of which are chargeable to tax under Schedule C or under section 123(3) the interest so deemed to be the income of the owner or beneficiary shall be deemed to be equal in amount to the amount of those proceeds.



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- (3) Nothing in subsection (1) above shall affect any provision of this Act authorising or requiring the deduction of income tax—
- (a) from any interest which, under that subsection, is deemed to be the income of the owner or beneficiary, or
  - (b) from the proceeds of any subsequent sale or other realisation of the right to receive that interest;
- but the proceeds of any such subsequent sale or other realisation shall not, for any of the purposes of the Tax Acts, be deemed to be the income of the seller or the person on whose behalf the right is otherwise realised.
- (4) Where—
- (a) the securities are of such a character that the interest payable in respect thereof may be paid without deduction of income tax, and
  - (b) the owner or beneficiary does not show that the proceeds of any sale or other realisation of the right to receive the interest which is deemed to be his income by virtue of this section have been charged to tax under Schedule C or under section 123(3),
- then the owner or beneficiary shall be chargeable to tax under Case VI of Schedule D in respect of that interest, but shall be entitled to credit for any tax which that interest is shown to have borne.
- (5) For the purposes of subsection (4) above, in any case where, if the interest had been chargeable under Case IV or Case V of Schedule D, the computation of tax would have been made by reference to the amount received in the United Kingdom, the tax under Case VI shall be computed on the full amount of the sums which have been or will be received in the United Kingdom in the year of assessment or any subsequent year in which the owner remains the owner of the securities.
- (6) In relation to corporation tax, subsections (4) and (5) above shall not apply but, subject to the provisions of the Tax Acts about distributions, the owner or beneficiary shall, in respect of any interest which is deemed to be his income by virtue of this section, be chargeable to corporation tax under Case VI of Schedule D unless he shows that the proceeds of any sale or other realisation of the right to receive that interest have been charged to tax under Schedule C or under section 123(3).
- (7) In this section—
- “interest” includes dividends, annuities and shares of annuities, and
- “securities” includes stocks and shares.
- (8) The Board may by notice require any person to furnish them within such time as they may direct (not being less than 28 days), in respect of all securities of which he was the owner at any time during the period specified in the notice, with such particulars as they consider necessary for the purposes of this section and for the purpose of discovering whether—
- (a) tax has been borne in respect of the interest on all those securities; or
  - (b) the proceeds of any sale or other realisation of the right to receive the interest on the securities have been charged to tax under Schedule C or section 123(3).

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**Marginal Citations**

**M77** Source—1970 s.470; 1971 Sch.6 71



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VALID FROM 01/05/1995

### **[<sup>F18</sup>730A Treatment of price differential on sale and repurchase of securities.**

- (1) Subject to subsection (8) below, this section applies where—
  - (a) a person (“the original owner”) has transferred any securities to another person (“the interim holder”) under an agreement to sell them;
  - (b) the original owner or a person connected with him is required to buy them back either—
    - (i) in pursuance of an obligation to do so imposed by that agreement or by any related agreement, or
    - (ii) in consequence of the exercise of an option acquired under that agreement or any related agreement;and
  - (c) the sale price and the repurchase price are different.
- (2) The difference between the sale price and the repurchase price shall be treated for the purposes of the Tax Acts—
  - (a) where the repurchase price is more than the sale price, as a payment of interest made by the repurchaser on a deemed loan from the interim holder of an amount equal to the sale price; and
  - (b) where the sale price is more than the repurchase price, as a payment of interest made by the interim holder on a deemed loan from the repurchaser of an amount equal to the repurchase price.
- (3) Where any amount is deemed under subsection (2) above to be a payment of interest, that payment shall be deemed for the purposes of the Tax Acts to be one that becomes due at the time when the repurchase price becomes due and, accordingly, is treated as paid when that price is paid.
- (4) Where any amount is deemed under subsection (2) above to be a payment of interest, the repurchase price shall be treated for the purposes of the Tax Acts (other than this section and sections 737A and 737C) and (in cases where section 263A of the 1992 Act does not apply) for the purposes of the 1992 Act—
  - (a) in a case falling within paragraph (a) of that subsection, as reduced by the amount of the deemed payment; and
  - (b) in a case falling within paragraph (b) of that subsection, as increased by the amount of the deemed payment.
- (5) For the purposes of section 209(2)(d) and (da) any amount which is deemed under subsection (2)(a) above to be a payment of interest shall be deemed to be interest in respect of securities issued by the repurchaser and held by the interim holder.
- (6) Any amount which—
  - (a) is deemed under subsection (2) above to be a payment of interest, and
  - (b) does not fall (apart from this subsection) to be treated as yearly interest,shall be treated for the purposes of section 338 as if the reference to yearly interest in subsection (3)(a) of that section included a reference to that amount.
- (7) The Treasury may by regulations provide for any amount which is deemed under subsection (2) above to be received as a payment of interest to be treated, in such

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circumstances and to such extent as may be described in the regulations, as comprised in income that is eligible for relief from tax by virtue of section 438, 592(2), 608(2) (a), 613(4), 614(2), (3) or (4), 620(6) or 643(2).

(8) Except where regulations under section 737E otherwise provide, this section does not apply if—

- (a) the agreement or agreements under which provision is made for the sale and repurchase are not such as would be entered into by persons dealing with each other at arm's length; or
- (b) all of the benefits or risks arising from fluctuations, before the repurchase takes place, in the market value of the securities sold accrue to, or fall on, the interim holder.

(9) In this section references to the repurchase price are to be construed—

- (a) in cases where section 737A applies, and
- (b) in cases where section 737A would apply if it were in force in relation to the securities in question,

as references to the repurchase price which is or, as the case may be, would be applicable by virtue of section 737C(3)(b), (9) or (11)(c).]

#### Textual Amendments

**F18** Ss. 730A, 730B inserted (with effect in accordance with s. 80(5) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 80\(1\)](#)

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

**C38** S. 730A applied (with modifications) (2.1.1996) by [The Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 1995 \(S.I. 1995/3220\), regs. 1, 4](#)

**C39** S. 730A applied (with modifications) (2.1.1996) by [The Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 1995 \(S.I. 1995/3220\), regs. 1, 5](#)

**C40** S. 730A modified by [Taxation of Chargeable Gains Act 1992 \(c. 12\), s. 263A](#) (as inserted (with effect in accordance with s. 80(5) of the 1995 amending Act) by [Finance Act 1995 \(c. 4\), s. 80\(4\)](#))

VALID FROM 01/05/1995

#### **[<sup>F18</sup>730B Interpretation of section 730A.**

(1) For the purposes of section 730A agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(2) References in section 730A to buying back securities—

- (a) shall include references to buying similar securities; and
- (b) in relation to a person connected with the original owner, shall include references to buying securities sold by the original owner or similar securities,

notwithstanding (in each case) that the securities bought have not previously been held by the purchaser; and references in that section to repurchase or to a repurchaser shall be construed accordingly.

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- (3) In section 730A and this section “securities” has the same meaning as in section 737A.
- (4) For the purposes of this section securities are similar if they entitle their holders—
  - (a) to the same rights against the same persons as to capital, interest and dividends, and
  - (b) to the same remedies for the enforcement of those rights,notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.
- (5) Section 839 (connected persons) applies for the purposes of section 730A.]

#### Textual Amendments

- F18** Ss. 730A, 730B inserted (with effect in accordance with s. 80(5) of the amending Act) by Finance Act 1995 (c. 4), s. 80(1)

VALID FROM 10/07/2003

#### [<sup>F19</sup>730BE] Exchange gains and losses on sale and repurchase of securities

- (1) For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where—
  - (a) the circumstances are as set out in section 730A(1)(a) and (b);
  - (b) the company is the repurchaser of the securities or (subject to subsection (11) below) the interim holder;
  - (c) the conditions in subsection (2) or (3) below are satisfied; and
  - (d) subsection (10) below does not prevent this section from applying,and references to a relationship to which this section applies, and to a company’s being a party to such a relationship, shall be construed accordingly.
- (2) The conditions in this subsection are that—
  - (a) the sale price and the repurchase price are expressed in a currency other than sterling;
  - (b) there is a difference between—
    - (i) the sterling equivalent of the sale price as at the date of the transfer of the securities to the interim holder (“the first sum”); and
    - (ii) the sterling equivalent of the sale price as at the date they are bought back by the repurchaser (“the second sum”); and
  - (c) the case is not one where section 93 of the Finance Act 1993 (accounts of a company in a currency other than sterling) applies in relation to the company.
- (3) The conditions in this subsection are that—
  - (a) the case is one where section 93 of the Finance Act 1993 applies in relation to the company;

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- (b) the sale price and the repurchase price are expressed in a currency other than the relevant foreign currency (within the meaning of that section) in relation to the company; and
  - (c) there is a difference between—
    - (i) the relevant foreign currency equivalent of the sale price as at the date of the transfer of the securities to the interim holder (“the first sum”); and
    - (ii) the relevant foreign currency equivalent of the sale price as at the date they are bought back by the repurchaser (“the second sum”).
- (4) Where a company has a relationship to which this section applies and—
- (a) the company is the repurchaser and the first sum exceeds the second sum; or
  - (b) the company is the interim holder and the second sum exceeds the first sum,
- the amount of the excess shall be treated for the purposes of the Corporation Tax Acts as an exchange gain (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships)) arising to the company from the relationship.
- (5) Where a company has a relationship to which this section applies and—
- (a) the company is the repurchaser and the second sum exceeds the first sum; or
  - (b) the company is the interim holder and the first sum exceeds the second sum,
- the amount of the excess shall be treated for the purposes of the Corporation Tax Acts as an exchange loss (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships)) arising to the company from the relationship.
- (6) Where an exchange gain or loss is treated by virtue of subsection (4) or (5) above as arising to a company from a relationship to which this section applies—
- (a) Chapter 2 of Part 4 of the Finance Act 1996 shall have effect in relation to the exchange gain or loss as it would have effect if it were an exchange gain or loss (as the case may be) arising to the company from a loan relationship to which it is a party; but
  - (b) the only debits and credits to be brought into account for the purposes of that Chapter by virtue of this section in respect of the relationship to which this section applies are those relating to the exchange gains and losses,
- and, subject to paragraph (b) above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.
- (7) Where a company has a relationship to which this section applies, the repurchase price shall be treated for the purposes of the Tax Acts (other than this section and sections 730A, 737A and 737C) and (in cases where section 263A of the 1992 Act does not apply) for the purposes of the 1992 Act—
- (a) in a case where an exchange gain arises to the company by virtue of subsection (4)(a) above or an exchange loss arises to the company by virtue of subsection (5)(b) above, as increased by the amount by which the first sum exceeds the second sum, and
  - (b) in a case where an exchange gain arises to the company by virtue of subsection (4)(b) above or an exchange loss arises to the company by virtue of subsection (5)(a) above, as reduced by the amount by which the second sum exceeds the first sum.
- (8) Any question whether debits or credits brought into account in accordance with subsection (6) above in relation to any company—

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- (a) are to be brought into account under section 82(2) of the Finance Act 1996 (trading loan relationships); or
- (b) are to be treated as non-trading debits or credits,
- shall be determined (subject to Schedule 11 to that Act (insurance companies)) according to the extent (if any) to which the company is a party to the repurchase in the course of activities forming an integral part of a trade carried on by that company.
- (9) To the extent that debits or credits fall to be brought into account by a company under section 82(2) of that Act in the case of a relationship to which this section applies, the company shall be regarded for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as being a party to the relationship for the purposes of a trade carried on by the company.
- (10) Except where regulations under section 737E otherwise provide, this section does not apply if—
- (a) the agreement or agreements under which provision is made for the sale and repurchase are not such as would be entered into by persons dealing with each other at arm's length; or
- (b) all of the benefits and risks arising from fluctuations, before the repurchase takes place, in the market value of the securities sold accrue to, or fall on, the interim holder.
- (11) Where—
- (a) the repurchase price is more than the sale price, so that by virtue of section 730A(2)(a) a payment of interest is treated as made by the repurchaser on a deemed loan from the interim holder; but
- (b) the payment of interest is treated as made to a person other than the interim holder,
- references to the “interim holder” in subsections (1), (4) and (5) above shall be read as references to the person to whom the payment of interest is treated as made.
- (12) Any reference in this section to the “relevant foreign currency equivalent” of an amount is, in the case of any company, a reference to the amount's equivalent expressed in the relevant foreign currency (within the meaning of section 93 of the Finance Act 1993) in relation to the company.
- (13) Expressions used in this section and in section 730A have the same meaning in this section as in that section.]

#### Textual Amendments

**F19** S. 730BB inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 38 para. 12

VALID FROM 29/04/1996

#### [<sup>F20</sup>730C Exchanges of gilts: traders etc.

- (1) This section has effect for the purposes of computing the profits and gains arising from any trade, profession or vocation carried on by any person in so far as the

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computation is such as to require amounts in respect of the acquisition or redemption of a gilt-edged security (including any strip) to be brought into account.

- (2) Where a gilt-edged security is exchanged by any person for strips of that security—
  - (a) the security shall be deemed to have been redeemed at the time of the exchange by the payment to that person of its market value; and
  - (b) that person shall be deemed to have acquired each strip for the amount which bears the same proportion to that market value as is borne by the market value of the strip to the aggregate of the market values of all the strips received in exchange for the security.
- (3) Where strips of a gilt-edged security are consolidated into a single security by being exchanged by any person for that security—
  - (a) each of the strips shall be deemed to have been redeemed at the time of the exchange by the payment to that person of the amount equal to its market value; and
  - (b) that person shall be deemed to have acquired the security for the amount equal to the aggregate of the market values of the strips given in exchange for the security.
- (4) References in this section to the market value of a security given or received in exchange for another are references to its market value at the time of the exchange.
- (5) Subsections (3) and (4) of section 473 shall not apply in the case of any exchange to which subsection (2) or (3) above applies.
- (6) Without prejudice to the generality of any power conferred by section 202 of the Finance Act 1996, the Treasury may by regulations make provision for the purposes of this section as to the manner of determining the market value at any time of any gilt-edged security (including any strip).
- (7) Regulations under subsection (6) above may—
  - (a) make different provision for different cases; and
  - (b) contain such incidental, supplemental, consequential and transitional provision as the Treasury may think fit.
- (8) This section does not apply for the purposes of corporation tax.
- (9) In this section—
 

“gilt-edged security” has the same meaning as in section 51A; and

“strip” means anything which, within the meaning of section 47 of the <sup>M78</sup>Finance Act 1942, is a strip of a gilt-edged security.]

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#### Textual Amendments

**F20** S. 730C inserted (29.4.1996) by Finance Act 1996 (c. 8), Sch. 40 para. 7

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#### Marginal Citations

**M78** 1942 c. 21.

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### *Purchase and sale of securities*

#### **731 Application and interpretation of sections 732 to 734.**

<sup>M79</sup>(1) In this section “the relevant provisions” means sections 732, 733, 734 and this section.

(2) Subject to subsections (3) to (10) below, the relevant provisions relate to cases of a purchase by a person (“the first buyer”) of any securities and their subsequent sale by him, the result of the transaction being that interest becoming payable in respect of the securities (“the interest”) is receivable by the first buyer.

(3) The relevant provisions do not relate to cases where—

- (a) the time elapsing between the purchase by the first buyer and his taking steps to dispose of the securities exceeded six months, or
- (b) that time exceeded one month and it is shown to the satisfaction of the Board that the purchase and sale were each effected at the current market price, and that the sale was not effected in pursuance of an agreement or arrangement made before or at the time of the purchase.

The jurisdiction of the General Commissioners or Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in the exercise of their functions under this subsection.

(4) The reference in subsection (3) above to the first buyer taking steps to dispose of the securities shall be construed—

- (a) if he sold them in the exercise of an option he had acquired, as a reference to his acquisition of the option,
- (b) in any other case, as a reference to his selling them.

<sup>F21</sup>(4A) For the purposes of subsection (3) above, where a purchase or sale is effected as a direct result of the exercise of a qualifying option, it shall be treated as effected at the current market price if the terms under which the first buyer acquired the option, or, as the case may be, became subject to it, were arm’s length terms.

(4B) For the purposes of subsection (4A) above an option is a “qualifying option” if it would be a traded option or financial option as defined in subsection (9) of section 137 of the 1979 Act were the reference in paragraph (b) of that subsection to the time of the abandonment or other disposal a reference to the time of exercise.

(4C) In subsection (4A) above the reference to arm’s length terms is to terms—

- (a) agreed between persons dealing at arm’s length, or
- (b) not so agreed, but nonetheless such as might reasonably be expected to have been agreed between persons so dealing.]

(5) For the purposes of the relevant provisions, a sale of securities similar to, and of the like nominal amount as, securities previously bought (“the original securities”) shall be equivalent to a sale of the original securities, and subsection (4) above shall apply accordingly; and where the first buyer bought parcels of similar securities at different times a subsequent sale of any of the securities shall, so far as may be, be related to the last to be bought of the parcels, and then to the last but one, and so on.

(6) A person shall be under no greater liability to tax by virtue of subsection (5) above than he would have been under if instead of selling the similar securities he had sold the original securities.



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- (7) Where at the time when a trade is, or is deemed to be, set up and commenced any securities form part of the trading stock belonging to the trade, those securities shall be treated for the purposes of this section—
- (a) as having been sold at that time in the open market by the person to whom they belonged immediately before that time, and
  - (b) as having been purchased at that time in the open market by the person thereafter engaged in carrying on the trade.
- (8) Subject to subsection (7) above, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued, the provisions of this section shall apply in relation to the person so engaged after the change as if anything done to or by his predecessor had been done to or by him.
- (9) <sup>M80</sup>For the purposes of the relevant provisions—
- “interest” includes a qualifying distribution and any dividend which is not a qualifying distribution, and in applying references to interest in relation to a qualifying distribution—
- (a) “gross interest” means the qualifying distribution together with the tax credit to which the recipient of the distribution is entitled in respect of it; and
  - (b) “net interest” means the qualifying distribution exclusive of any such tax credit;
- “person” includes any body of persons, and references to a person entitled to any exemption from tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption;
- “securities” includes stocks and shares, except securities which are securities for the purposes of sections 710 to 728.
- (10) For the purposes of the relevant provisions, securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred; and for the purposes of this subsection, rights guaranteed by the Treasury shall be treated as rights against the Treasury.

#### Textual Amendments

**F21** S. 731(4A)(4B)(4C) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 55(1)(2)

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

**C41** See s.343—*company reconstruction without change of ownership.*

#### Marginal Citations

**M79** Source—1970 s.471(1)-(5)

**M80** Source—1970 s.471(6); 1973 sch.11 6; 1986 Sch.18 2(1)



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## 732 Dealers in securities.

<sup>M81</sup>(1) Subject to the provisions of this section, if the first buyer is engaged in carrying on a trade which consists of or comprises dealing in securities, then, in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade, the price paid by him for the securities shall be reduced by the appropriate amount in respect of the interest, as determined in accordance with section 735.

(2) Subsection (1) above shall not apply if the subsequent sale is carried out by the first buyer after 26th October 1986 in the ordinary course of his business as a market maker in securities of the kind concerned.

[<sup>F22</sup>(2A) Subsection (1) above shall not apply in prescribed circumstances if—

- (a) the first buyer is—
  - (i) a prescribed recognised clearing house, or
  - (ii) a member, of a prescribed class or description, of a prescribed recognised investment exchange, and
- (b) the subsequent sale is carried out by the first buyer after a prescribed date and in the ordinary course of his business.]

(3) Subsection (1) above shall not apply if the purchase of the securities by the first buyer and their resale, or as the case may be the subsequent sale of similar securities, constitute a transaction which is to be left out of account in computing profits or losses by virtue of section 729(4), or a transaction which would fall to be so left out of account apart from section 729(8).

(4) Subsection (1) above shall not apply if the securities are overseas securities bought by the first buyer on a stock exchange outside the United Kingdom in the ordinary course of his trade as a dealer in securities and the following conditions are satisfied, namely—

- (a) the interest is brought into account in computing for the purposes of the Tax Acts the profits arising from or loss sustained in the trade, and
- (b) where credit against tax would fall to be allowed in respect of the interest under section 788 or 790, the first buyer elects that credit shall not be so allowed.

In this subsection “overseas securities” means securities of the government of, or of a body of persons resident in, any country or territory outside the United Kingdom and the Republic of Ireland.

(5) Subsection (1) above shall not apply if the securities are Eurobonds bought by the first buyer in the ordinary course of his trade as a dealer in Eurobonds; and in this subsection “Eurobond” means a security—

- (a) which is neither preference stock nor preference share capital; and
- (b) which is issued in bearer form; and
- (c) which carries a right to interest either at a fixed rate or at a rate bearing a fixed relationship to a standard published base rate; and
- (d) which does not carry a right to any other form of benefit, whether in the nature of interest, participation in profits or otherwise; and
- (e) the interest on which is payable without any deduction in respect of income tax or of any tax of a similar character imposed by the laws of a territory outside the United Kingdom;

but, notwithstanding anything in paragraph (d) above, a security is not prevented from being a Eurobond by reason only that it carries a right to convert into a security

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of another description or to subscribe for further securities (whether of the same description or not).

[<sup>F23</sup>(5A) Subsection (1) above shall not apply if the securities are rights in a unit trust scheme and the subsequent sale is carried out by the first buyer in the ordinary course of his business as manager of the scheme.]

(6) For the purposes of subsection (2) above a person is a market maker in securities of a particular kind if he—

- (a) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of that kind at a price specified by him; and
- (b) is recognised as doing so by the Council of the Stock Exchange.

[<sup>F24</sup>(7) For the purposes of subsection (2A) above—

“prescribed” means prescribed in regulations made by the Treasury;

“recognised clearing house” means a recognised clearing house within the meaning of the Financial Services Act 1986;

“recognised investment exchange” means a recognised investment exchange within the meaning of that Act.]

#### Textual Amendments

**F22** S. 732(2A) inserted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 56(1)

**F23** S. 732(5A) inserted (retrospectively) by [Finance Act 1990 \(c. 29\)](#), s.53(1)

**F24** S. 732(7) added by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 56(2)

#### Marginal Citations

**M81** Source—1970 s.472; 1982 s.57; 1986 Sch.18 1, 3

### 733 Persons entitled to exemptions.

<sup>M82</sup>(1) If the first buyer is entitled under any enactment to an exemption from tax which, apart from this subsection, would extend to the interest, then the exemption shall not extend to an amount equal to the appropriate amount in respect of the interest, as determined in accordance with section 735.

(2) If the first buyer is so entitled and any annual payment is payable by him out of the interest, the annual payment shall be deemed as to the whole thereof to be paid out of profits or gains not brought into charge to income tax, and section 349(1) shall apply accordingly.

#### Marginal Citations

**M82** Source—1970 s.473

### 734 Persons other than dealers in securities.

<sup>M83</sup>(1) If the first buyer carries on a trade not falling within section 732, then in ascertaining whether any or what repayment of income tax is to be made to him under section 380 or 381 by reference to any loss sustained in the trade and the amount of his income

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for the year of assessment his income for which includes the interest, there shall be left out of account—

- (a) the appropriate amount in respect of the interest, as determined in accordance with section 735, and
  - (b) any tax paid on that amount.
- (2) Where the first buyer is a company which does not carry on a trade falling within section 732—
- (a) the appropriate amount in respect of the interest, as determined in accordance with section 735(2), and
  - (b) any tax paid in respect of or deducted from that amount,
- shall be disregarded except that, for the purposes of corporation tax on chargeable gains, the appropriate proportion of the net interest receivable by the first buyer as mentioned in section 735(2) shall be treated as if it were a capital distribution within the meaning of section 72(5)(b) of the 1979 Act received in respect of the holding of the securities concerned.
- (3) In applying references in this section to interest in relation to a qualifying distribution, references to any tax paid on or in respect of an amount shall be construed as references to so much of any related tax credit as is attributable to that amount; and for this purpose “related tax credit”, in relation to an amount, means the tax credit to which the recipient of the distribution of which that amount is a proportion is entitled.

#### Marginal Citations

**M83** Source—1970 s.474; 1973 Sch.11 7; 1979(C) Sch.7; 1978 s.30(7)

### 735 Meaning of “appropriate amount in respect of” interest.

- <sup>M84</sup>(1) For the purposes of section 732 the appropriate amount in respect of the interest is the appropriate proportion of the net interest receivable by the first buyer.
- (2) For the purposes of sections 733 and 734 the appropriate amount in respect of the interest is the gross amount corresponding with the appropriate proportion of the net interest receivable by the first buyer.
- (3) For the purposes of this section the appropriate proportion is the proportion which—
- (a) the period beginning with the date on which the securities were first listed in The Stock Exchange Daily Official List at a price excluding the value of the interest payment last payable before the interest receivable by the first buyer, and ending with the day before the day on which the first buyer bought the securities, bears to—
  - (b) the period beginning with that date and ending with the day before the first date after the purchase by the first buyer on which the securities are quoted in that List at a price excluding the value of the interest receivable by the first buyer.
- (4) Where the interest receivable by the first buyer was the first interest payment payable in respect of the securities, paragraphs (a) and (b) of subsection (3) above shall have effect with the substitution, for references to the date on which the securities were first quoted as mentioned in paragraph (a), of the beginning of the period for which the interest was payable; except that where the capital amount of the securities was not

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fully paid at the beginning of that period and one or more instalments of capital were paid during that period—

- (a) the interest shall be treated as divided into parts, calculated by reference to the amount of the interest attributable to the capital paid at or before the beginning of that period and the amount thereof attributable to each such instalment, and
  - (b) treating each of those parts as interest payable for that period or, where the part was calculated by reference to any such instalment, as interest payable for the part of that period beginning with the payment of the instalment, there shall be calculated, in accordance with the preceding provisions of this section, the amount constituting the appropriate proportion of each part, and
  - (c) the appropriate proportion of the interest for the purposes of this section shall be the proportion thereof constituted by the sum of those amounts.
- (5) In relation to securities not listed in the Stock Exchange Daily Official List, subsection (3) above shall have effect with the substitution for the periods therein mentioned of such periods as in the opinion of the Commissioners having jurisdiction in the matter, correspond therewith in the case of the securities in question.

**Marginal Citations**

**M84** Source—1970 s.475; 1973 Sch.21 7

*Miscellaneous provisions relating to securities*

**736 Company dealing in securities: distribution materially reducing value of holding.**

- <sup>M85</sup>(1) Subsection (2) below applies where a company has, as a dealing company, a holding in another company resident in the United Kingdom (being a body corporate), and—
- (a) the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in that company, and
  - (b) a distribution is, or two or more distributions are, made in respect of the holding, and
  - (c) the value (at any accounting date or immediately before realisation or appropriation) of any security comprised in the holding is materially reduced below the value of the security at the time when it was acquired, and the whole or any part of this reduction is attributable to any distribution falling within paragraph (b) above;

and in relation to any security comprised in the holding, the company having the holding is in subsection (2) below referred to as “the dealing company” and so much of any reduction in the value of the security as is attributable to any distribution falling within paragraph (b) above is in that subsection referred to as “the relevant reduction”.

- (2) Where this subsection applies, an amount equal to the relevant reduction in the value of a security comprised in the holding—
- (a) shall, if and so long as the security is not realised or appropriated as mentioned below, be added to the value of the security for the purposes of any valuation;
  - (b) shall be treated, on any realisation of the security in the course of trade, as a trading receipt of the dealing company or, in the event of a partial realisation, shall be so treated to an appropriate extent, and

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- (c) shall be treated as a trading receipt of the dealing company if the security is appropriated in such circumstances that a profit on the sale of the security would no longer form part of the dealing company's trading profits.
- (3) References in this section to a holding in a company refer to a holding of securities by virtue of which the holder may receive distributions made by the company, but so that—
- (a) a company's holdings of different classes in another company shall be treated as separate holdings, and
- (b) holdings of securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.
- (4) For the purposes of subsection (2) above—
- (a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and
- (b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class;
- and section 839 shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words "or exercise control of" in each place where they occur there were inserted the words "or to acquire a holding in".
- (5) Where this section applies in relation to a distribution which consists of or includes interest to which section 732 applies, any reduction under that section in the price paid for the securities in respect of which the distribution is made shall be adjusted in such manner as seems appropriate to the Board to take account of subsection (2) above.
- (6) For the purposes of this section "security" includes a share or other right and a company is a "dealing company" in relation to a holding if a profit on a sale of the holding would be taken into account in computing the company's trading profits.

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

**C42** See s.237—disallowance of reliefs in respect of bonus issues etc.

**Marginal Citations**

**M85** Source—1970 s.476

[<sup>F25</sup>**736A** **Manufactured dividends and interest.**

Schedule 23A to this Act shall have effect in relation to certain cases where under a contract or other arrangements for the transfer of shares or other securities a person is required to pay to the other party an amount representative of a dividend or payment of interest on the securities.]

**Textual Amendments**

**F25** S. 736A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(1) (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain

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purposes by S.I. 1992/173, **reg. 2(a)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs. 2, 3, 4**; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2, 3(a), 4(1)**

VALID FROM 19/03/1997

**[<sup>F26</sup>736B Deemed manufactured payments in the case of stock lending arrangements.**

- (1) This section applies where—
- (a) any interest on securities transferred by the lender under a stock lending arrangement is paid, as a consequence of the arrangement, to a person other than the lender; and
  - (b) no provision is made for securing that the lender receives payments representative of that interest.
- (2) Where this section applies, Schedule 23A and the provisions for the time being contained in any regulations under that Schedule shall apply as if—
- (a) the borrower were required under the stock lending arrangement to pay the lender an amount representative of the interest mentioned in subsection (1) (a) above;
  - (b) a payment were made by the borrower in discharge of that requirement; and
  - (c) that payment were made on the same date as the payment of the interest of which it is representative.
- (3) In this section—
- “interest” includes dividends; and
  - “stock lending arrangement” and “securities” have the same meanings as in section 263B of the 1992 Act.]

**Textual Amendments**

**F26** S. 736B inserted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 3**; S.I. 1997/991, **art. 2**

VALID FROM 19/07/2006

**[<sup>F27</sup>736C Deemed interest: cash collateral under stock lending arrangements**

- (1) This section applies where—
- (a) the borrower under a stock lending arrangement is treated under section 736B(2) as paying under that arrangement an amount representative of interest on any securities (“the relevant securities”),
  - (b) an amount of money (“cash collateral”) is payable to or for the benefit of the lender for the purpose of securing the discharge of the requirement to transfer the relevant securities back to the lender,
  - (c) the stock lending arrangement is designed to produce a return to the borrower which equates, in substance, to the return on an investment of money at interest, and

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- (d) the main purpose, or one of the main purposes, of the stock lending arrangement is the obtaining of a tax advantage.
- (2) Where this section applies—
    - (a) the Tax Acts are to apply as if the borrower receives an amount of interest payable in respect of the cash collateral, and
    - (b) the amount of the interest is calculated in accordance with the following provisions of this section (see, in particular, subsections (3) to (7)).
  - (3) The interest is treated for the purposes of the Tax Acts as if it were received on the date (“the return date”) on which the borrower transfers the relevant securities back to the lender.
  - (4) The interest is treated for the purposes of the Tax Acts as if it were payable in respect of the period (“the interest period”)—
    - (a) beginning with the date on which the lender transfers the relevant securities to the borrower, and
    - (b) ending with the return date.
  - (5) The rate of interest payable in respect of the cash collateral is a rate that is reasonably comparable to the rate that the borrower could obtain by placing the cash collateral on deposit for the interest period.
  - (6) For the purposes of this section, the amount of the cash collateral on which the interest is payable is taken to be—
    - (a) in any case where the amount of the cash collateral varies at any time on or before the return date, the highest amount of the cash collateral at any time on or before the return date, and
    - (b) in any other case, the amount of the cash collateral as at the return date.
  - (7) The amount of the interest which the borrower is treated as receiving in respect of the cash collateral for the interest period is reduced (but not below nil) by any interest which the borrower actually receives in respect of that collateral for that period.
  - (8) If the borrower is a person within the charge to income tax, the interest which the borrower is treated as receiving is charged to income tax under Chapter 2 of Part 4 of ITTOIA 2005 (interest).
  - (9) If the borrower is a company within the charge to corporation tax—
    - (a) the interest which the borrower is treated as receiving is treated for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) as payable to it on a money debt,
    - (b) that money debt is treated for those purposes as a relationship to which section 100 of the Finance Act 1996 applies (money debts etc not arising from the lending of money), and
    - (c) the credits to be brought into account for those purposes in respect of the interest must be determined using an amortised cost basis of accounting.
  - (10) The fact that the borrower is treated as receiving an amount of interest is not to be taken as implying that the interest is payable by the lender or any other person.
  - (11) For the purposes of this section—
    - “money” includes money expressed in a currency other than sterling,

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“stock lending arrangement” and “securities” have the same meanings as in section 263B of the 1992 Act,

“tax advantage” has the meaning given by section 709(1).

(12) For the purposes of this section—

- (a) any reference to the transfer of securities back has the same meaning as in section 263B of the 1992 Act (see, in particular, sections 263B(5) and 263C(1) of that Act), but
- (b) if it becomes apparent that the borrower will not comply with the requirement to transfer any securities back, the borrower is treated as if he transfers them back on the date on which it becomes so apparent.

(13) For the purposes of this section it does not matter—

- (a) whether the cash collateral is payable by the borrower or by any other person,
- (b) whether the cash collateral is payable under the stock lending arrangement or under any other arrangement,
- (c) whether collateral in another form is also provided in connection with the stock lending arrangement.

[ See section 736D—

- <sup>F28</sup>(14) (a) for provision treating certain arrangements as stock lending arrangements for the purposes of this section, and
- (b) for provision treating certain amounts as cash collateral for those purposes.]]

#### Textual Amendments

**F27** S. 736C inserted (with effect in accordance with Sch. 6 para. 3(2)-(4) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 3(1)

**F28** S. 736C(14) inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 4(2)

VALID FROM 19/07/2006

#### <sup>F29</sup>736D Quasi-stock lending arrangements and quasi-cash collateral

(1) In this section “quasi-stock lending arrangement” means so much of any arrangements between two or more persons as are not stock lending arrangements, but are arrangements under which—

- (a) a person (“the lender”) transfers securities to another person (“the borrower”), and
- (b) a requirement is imposed on a person to transfer any or all of the securities, or any other property, back to the lender or any other person,

and it does not matter whether the person on whom that requirement is imposed is the borrower or any other person.

(2) In this section “quasi-cash collateral”, in relation to any stock lending arrangement or quasi-stock lending arrangement, means—

- (a) any money which is payable for a relevant purpose, plus
- (b) any other property which is transferable for a relevant purpose.



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- (3) Money or other property is payable or transferable for a relevant purpose if it is payable or transferable to or for the benefit of—
  - (a) the lender under the stock lending arrangement or quasi-stock lending arrangement, or
  - (b) a person connected with that lender,for the purpose of securing the discharge of the requirement to transfer any or all of the securities, or any other property, back to that lender or any other person.
- (4) For the purposes of sections 736B and 736C, a quasi-stock lending arrangement is treated as if it were a stock lending arrangement.
- (5) For the purposes of section 736C, in relation to any stock lending arrangement or quasi-stock lending arrangement,—
  - (a) quasi-cash collateral is treated as if it were cash collateral, and
  - (b) the amount of the quasi-cash collateral in relation to the stock lending arrangement or quasi-stock lending arrangement is taken to be the amount of the cash collateral.
- (6) If any property other than money is transferable for a relevant purpose, the amount of the quasi-cash collateral so far as relating to that property is determined by reference to its market value.
- (7) In any case where—
  - (a) section 736C applies in relation to a quasi-stock lending arrangement, and
  - (b) the person for whom the tax advantage was designed to be obtained is a person (“the other person”) other than the borrower under that arrangement,that section has effect as if the other person were the person who receives the amount of interest mentioned in that section.
- (8) In any case where section 736C applies in relation to a quasi-stock lending arrangement—
  - (a) any reference in that section to cash collateral being payable to or for the benefit of the lender includes its being payable to or for the benefit of a person connected with the lender,
  - (b) the reference in subsection (1)(c) of that section to a return to the borrower includes a return to any other person, and
  - (c) any reference in that section to the transfer back of the relevant securities by the borrower to the lender includes the transfer back of any or all of the securities, or any other property, by any person to the lender or any other person.
- (9) Section 839 (connected persons) applies for the purposes of this section.
- (10) In this section—
  - “money” includes money expressed in a currency other than sterling,
  - “property” means property in any form,
  - “stock lending arrangement” and “securities” have the same meaning as in section 263B of the 1992 Act,
  - “transfer” means a transfer otherwise than by way of sale.]

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### Textual Amendments

- F29** S. 736D inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 4(3)

## 737 Manufactured dividends: treatment of tax deducted.

[<sup>F30</sup>(1) Subject to the provisions of this section and of Schedule 23A, where, under a contract or other arrangements for the transfer of securities, one of the parties (the “dividend manufacturer”) is required to pay to the other an amount representative of a periodical payment of interest on the securities, section 350(1) and Schedule 16 shall apply as if the payment by the dividend manufacturer (the “manufactured dividend”) were an annual payment made, after due deduction of tax, wholly out of a source other than profits or gains brought into charge to income tax.]

(2) Subsection (1) of this section shall not apply where <sup>F31</sup> . . . the interest in question is payable without deduction of tax or where, under the rules of the stock exchange governing the transaction, the payment required to be made in respect of the interest is of the amount of the interest before deduction of tax.

[<sup>F32</sup>(3) Subsection (1) above shall not apply in any case where—

- (a) the dividend manufacturer is a company resident in the United Kingdom; or
- (b) the manufactured dividend is a manufactured overseas dividend, within the meaning of Schedule 23A.]

<sup>F33</sup>(4) . . . . .

[<sup>F34</sup>(5) Where the dividend manufacturer in relation to the contract or other arrangements mentioned in subsection (1) above is not resident in the United Kingdom and the manufactured dividend is paid by him otherwise than in the course of a trade which he carries on through a branch or agency in the United Kingdom, that subsection shall not apply; but if the manufactured dividend is received by a person resident in the United Kingdom (the “United Kingdom recipient”), then unless the United Kingdom recipient shows either—

- (a) that the dividend manufacturer was entitled to payment of the dividend as the registered holder of the securities, or
- (b) that the dividend manufacturer was entitled to payment of the dividend directly or indirectly from a person from whom he acquired the securities, or to whom he transferred them, and who was so entitled to the payment,

the United Kingdom recipient shall be assessable and chargeable with an amount of income tax in respect of the manufactured dividend equal to that which the dividend manufacturer would have been required to account for and pay had he been resident in the United Kingdom.]

[<sup>F35</sup>(5A) Where this section applies in relation to a manufactured dividend, relief shall not be given to any person under any provision of the Tax Acts in respect of any amount which he is required to deduct from the manufactured dividend on account of income tax; and in this subsection “relief” means relief by way of—

- (a) deduction in computing profits or gains; or
- (b) deduction or set off against income or total profits.]

(6) In this section—

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[<sup>F36</sup>“dividend manufacturing regulations” means regulations made by the Treasury under Schedule 23A;

“prescribed” means prescribed in dividend manufacturing regulations;

“recognised investment exchange” means a recognised investment exchange within the meaning of the Financial Services Act 1986;]

“securities” includes shares and stock;

[<sup>F37</sup>“transfer” includes any sale or other disposal;]

and references to a periodical payment of interest include references to a qualifying distribution and any dividend which is not a qualifying distribution.

- (7) In the application of this section in a case where the references in subsection (1) above to a periodical payment of interest are construed as references to a qualifying distribution, subsection (2) above shall be omitted.

[<sup>F38</sup>(7A) Where the dividend manufacturer—

- (a) is not resident in the United Kingdom but carries on a trade through a branch or agency in the United Kingdom, or
- (b) is a member, of a prescribed class or description, of a prescribed recognised investment exchange,

dividend manufacturing regulations may make provision for this section and such other provisions of the Tax Acts as may be prescribed to apply with prescribed modifications in connection with the manufactured dividend or any tax required to be deducted or accounted for in respect of it.

- (7B) Without prejudice to the generality of subsection (7A) above, dividend manufacturing regulations made by virtue of that subsection may, in particular, include provision—

- (a) entitling the dividend manufacturer to any prescribed relief to which he would not otherwise be entitled;
- (b) denying the dividend manufacturer any prescribed relief to which he would otherwise be entitled;
- (c) prescribing the manner in which amounts required to be deducted or accounted for on account of tax are to be accounted for and paid;

and, without prejudice to the generality of paragraph (c) above, any regulations made for the purpose specified in that paragraph may include provision, in a case falling within subsection (7A)(a) above, for the manufactured dividend to be a relevant payment for the purposes of Schedule 16 and for that Schedule to apply in relation to it with such modifications as may be prescribed.]

- (8) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred any such liability.

#### Textual Amendments

**F30** S. 737(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(2)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by

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- S.I. 1992/1346, **regs.2, 3, 4**; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2, 3(c), 4(1)**)
- F31** Words in s. 737(2) repealed (for the year 1991-92 and the subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19 Pt.V**, Note 6
- F32** S. 737(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(3)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2, 3, 4**; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2, 3(c), 4(1)**)
- F33** S. 737(4) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 58(2), 123, **Sch. 13 para. 3(4), Sch. 19 Pt. V**, Note 9 (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2, 3, 4**; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2, 3(c), 4(1)**)
- F34** S. 737(5) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(4)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2, 3, 4**; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2, 3(c), 4(1)**)
- F35** S. 737(5A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(5)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified): 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2, 3, 4**; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2, 3(c), 4(1)**)
- F36** Definitions in s. 737(6) substituted for definitions of "broker" and "market maker" by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(6)(a)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2, 3, 4**; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2, 3(c), 4(1)**)
- F37** Definition in s. 737(6) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(6)(b)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2, 3, 4**; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2, 3(c), 4(1)**)
- F38** S. 737(7A)(7B) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(7)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2, 3, 4**; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2, 3(c), 4(1)**)

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

- C43** S. 737 applied (with modifications) (24.9.1992) by S.I. 1992/2074, **reg. 14(1)**
- C44** S. 737(1) modified (22.3.1992) by S.I. 1992/569, **reg. 13(2)**
- C45** S. 737(5A) modified (22.3.1992) by S.I. 1992/569, **reg. 14(1)(2)**

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VALID FROM 03/05/1994

**[<sup>F39</sup>737A Sale and repurchase of securities: deemed manufactured payments.**

- (1) This section applies where on or after the appointed day a person (the transferor) agrees to sell any securities, and under the same or any related agreement the transferor or another person connected with him—
  - (a) is required to buy back the securities, or
  - (b) acquires an option, which he subsequently exercises, to buy back the securities;but this section does not apply unless the conditions set out in subsection (2) below are fulfilled.
- (2) The conditions are that—
  - (a) as a result of the transaction, a dividend which becomes payable in respect of the securities is receivable otherwise than by the transferor,
  - (b) the dividend is not, by virtue of any other provision of the Tax Acts, treated as income of the transferor,
  - (c) there is no requirement under any agreement mentioned in subsection (1) above for a person to pay to the transferor on or before the relevant date an amount representative of the dividend, and
  - (d) it is reasonable to assume that, in arriving at the repurchase price of the securities, account was taken of the fact that the dividend is receivable otherwise than by the transferor.
- (3) For the purposes of subsection (2) above the relevant date is the date when the repurchase price of the securities becomes due.
- (4) Where it is a person connected with the transferor who is required to buy back the securities, or who acquires the option to buy them back, references in the following provisions of this section to the transferor shall be construed as references to the connected person.
- (5) Where this section applies, section 737 and Schedule 23A and dividend manufacturing regulations shall apply as if—
  - (a) the relevant person were required, under the arrangements for the transfer of the securities, to pay to the transferor an amount representative of the dividend mentioned in subsection (2)(a) above,
  - (b) a payment were made by that person to the transferor in discharge of that requirement, and
  - (c) the payment were made on the date when the repurchase price of the securities becomes due.
- (6) In subsection (5) above “the relevant person” means—
  - (a) where subsection (1)(a) above applies, the person from whom the transferor is required to buy back the securities;
  - (b) where subsection (1)(b) above applies, the person from whom the transferor has the right to buy back the securities;and in that subsection “dividend manufacturing regulations” means regulations under Schedule 23A (whenever made).]

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### Textual Amendments

**F39** Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 122

### Modifications etc. (not altering text)

**C46** S. 737A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), regs. 1, 4

**C47** S. 737A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), regs. 1, 5

VALID FROM 03/05/1994

### **[<sup>F39</sup>737B Interpretation of section 737A.**

- (1) In section 737A and this section “securities” means United Kingdom equities, United Kingdom securities or overseas securities; and—
  - (a) where the securities mentioned in section 737A(1) are United Kingdom securities, references in section 737A to a dividend shall be construed as references to a periodical payment of interest;
  - (b) where the securities mentioned in section 737A(1) are overseas securities, references in section 737A to a dividend shall be construed as references to an overseas dividend.
- (2) In this section “United Kingdom equities”, “United Kingdom securities”, “overseas securities” and “overseas dividend” have the meanings given by paragraph 1(1) of Schedule 23A.
- (3) For the purposes of section 737A agreements are related if each is entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).
- (4) In section 737A “the repurchase price of the securities” means—
  - (a) where subsection (1)(a) of that section applies, the amount which, under any agreement mentioned in section 737A(1), the transferor or connected person is required to pay for the securities bought back, or
  - (b) where subsection (1)(b) of that section applies, the amount which under any such agreement the transferor or connected person is required, if he exercises the option, to pay for the securities bought back.
- (5) In section 737A and subsection (4) above references to buying back securities include references to buying similar securities.
- (6) For the purposes of subsection (5) above securities are similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred; and “interest” here includes dividends.
- (7) For the purposes of section 737A and subsection (4) above—



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- (a) a person who is connected with the transferor and is required to buy securities sold by the transferor shall be treated as being required to buy the securities back notwithstanding that it was not he who sold them, and
  - (b) a person who is connected with the transferor and acquires an option to buy securities sold by the transferor shall be treated as acquiring an option to buy the securities back notwithstanding that it was not he who sold them.
- (8) Section 839 shall apply for the purposes of section 737A and this section.
- (9) In section 737A “the appointed day” means such day as the Treasury may by order appoint, and different days may be appointed in relation to—
- (a) United Kingdom equities,
  - (b) United Kingdom securities, and
  - (c) overseas securities.]

#### Subordinate Legislation Made

- P1 S. 737B(9) power exercised: 1.5.1995 appointed by S.I. 1995/1007, [art. 2](#)
- P2 S. 737B(9) power exercised: 6.11.1996 appointed by S.I. 1996/2645, [art. 2](#)

#### Textual Amendments

- F39 Ss. 737A-737C inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [s. 122](#)

VALID FROM 03/05/1994

#### [<sup>F39</sup>737C Deemed manufactured payments: further provisions.

- (1) This section applies where section 737A applies.
- (2) Subsection (3) below applies where—
  - (a) the dividend mentioned in section 737A(2)(a) is a dividend on United Kingdom equities, and
  - (b) by virtue of section 737A(5), section 737 and paragraph 2 of Schedule 23A apply, or paragraph 2 of Schedule 23A applies, in relation to the payment which is treated under section 737A(5) as having been made;and in subsection (3) below “the deemed manufactured dividend” means that payment.
- (3) Where this subsection applies—
  - (a) the amount of the deemed manufactured dividend shall be taken to be an amount equal to the amount of the dividend mentioned in section 737A(2)(a);
  - (b) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by an amount equal to the gross amount of the deemed manufactured dividend.
- (4) In subsection (3) above the reference to the gross amount of the deemed manufactured dividend is to the aggregate of—
  - (a) the amount of the deemed manufactured dividend, and

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- (b) the amount of the tax credit that would have been issued in respect of the deemed manufactured dividend had the deemed manufactured dividend in fact been a dividend on the United Kingdom equities.
- (5) Subsection (6) below applies where—
- (a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and
- (b) by virtue of section 737A(5), section 737 applies in relation to the payment which is treated under section 737A(5) as having been made;
- and in subsection (6) below “the deemed manufactured interest” means the payment referred to in paragraph (b) above.
- (6) Where this subsection applies, the amount of the deemed manufactured interest shall be taken to be an amount equal to the gross amount of the periodical payment referred to in subsection (5)(a) above reduced by an amount equal to income tax thereon at the basic rate for the year of assessment in which that periodical payment is made.
- (7) Subsection (8) below applies where—
- (a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and
- (b) by virtue of section 737A(5), paragraph 3 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made (whether or not section 737 also applies in relation to that payment);
- and in subsection (8) below “the deemed manufactured interest” means the payment referred to in paragraph (b) above.
- (8) Where this subsection applies—
- (a) the gross amount of the deemed manufactured interest shall be taken to be the amount found under paragraph 3(4) of Schedule 23A;
- (b) any deduction which, by virtue of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured interest shall be deemed to have been made.
- (9) Where subsections (6) and (8) above apply, or where subsection (8) above applies, the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured interest.
- (10) Subsection (11) below applies where—
- (a) the dividend mentioned in section 737A(2)(a) is an overseas dividend, and
- (b) by virtue of section 737A(5), paragraph 4 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made;
- and in subsection (11) below “the deemed manufactured overseas dividend” means that payment.
- (11) Where this subsection applies—
- (a) the gross amount of the deemed manufactured overseas dividend shall be taken to be the amount found under paragraph 4(5)(b) and (c) of Schedule 23A;
- (b) any deduction which, by virtue of paragraph 4 of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured overseas dividend shall be deemed to have been made;



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- (c) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured overseas dividend.
- (12) In this section—
- (a) “United Kingdom equities”, “United Kingdom securities” and “overseas dividend” have the meanings given by paragraph 1(1) of Schedule 23A;
  - (b) “the repurchase price of the securities” shall be construed in accordance with section 737B(4).]

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#### Textual Amendments

**F39** Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 122

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

**C48** S. 737C applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), regs. 1, 5

### Supplemental

VALID FROM 01/05/1995

#### [<sup>F40</sup>737D] Power to provide for manufactured payments to be eligible for relief.

- (1) The Treasury may by regulations provide for any manufactured payment made to any person to be treated, in such circumstances and to such extent as may be described in the regulations, as comprised in income of that person that is eligible for relief from tax by virtue of section 438, 592(2), 608(2)(a), 613(4), 614(2), (3) or (4), 620(6) or 643(2).
- (2) In this section “manufactured payment” means any manufactured dividend, manufactured interest or manufactured overseas dividend, within the meaning of Schedule 23A.]

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#### Textual Amendments

**F40** Ss. 737D, 737E inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 83(1)

VALID FROM 01/05/1995

#### [<sup>F40</sup>737E] Power to modify sections 727A, 730A and 737A to 737C.

- (1) The Treasury may by regulations make provision for all or any of sections 727A, 730A and 737A to 737C to have effect with modifications in relation to cases involving any arrangement for the sale and repurchase of securities where—
  - (a) the obligation to make the repurchase is not performed or the option to repurchase is not exercised;

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- (b) provision is made by or under any agreement for different or additional securities to be treated as, or as included with, securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale;
  - (c) provision is made by or under any agreement for any securities to be treated as not included with securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale;
  - (d) provision is made by or under any agreement for the sale price or repurchase price to be determined or varied wholly or partly by reference to fluctuations, occurring in the period after the making of the agreement for the original sale, in the value of securities transferred in pursuance of that sale, or in the value of securities treated as representing those securities; or
  - (e) provision is made by or under any agreement for any person to be required, in a case where there are any such fluctuations, to make any payment in the course of that period and before the repurchase price becomes due.
- (2) The Treasury may by regulations make provision for all or any of sections 727A, 730A and 737A to 737C to have effect with modifications in relation to cases where—
- (a) arrangements, corresponding to those made in cases involving an arrangement for the sale and repurchase of securities, are made by any agreement, or by one or more related agreements, in relation to securities that are to be redeemed in the period after their sale; and
  - (b) those arrangements are such that the person making the sale or a person connected with him (instead of being required to repurchase the securities or acquiring an option to do so) is granted rights in respect of the benefits that will accrue from their redemption.
- (3) The Treasury may by regulations provide that section 730A is to have effect with modifications in relation to cases involving any arrangement for the sale and repurchase of securities where there is an agreement relating to the sale or repurchase which is not such as would be entered into by persons dealing with each other at arm's length.
- (4) The powers conferred by subsections (1) and (2) above shall be exercisable in relation to section 263A of the 1992 Act as they are exercisable in relation to section 730A of this Act.
- (5) Regulations made for the purposes of this section may—
- (a) make different provision for different cases; and
  - (b) contain such supplementary, incidental, consequential and transitional provision as appears to the Treasury to be appropriate.
- (6) The supplementary, incidental and consequential provision that may be made by regulations under this section shall include—
- (a) in the case of regulations relating to section 730A, provision modifying subsections (3)(b), (9), (11)(c) and (11A) of section 737C; and
  - (b) in the case of regulations relating to section 263A of the 1992 Act, provision modifying the operation of that Act in relation to cases where by virtue of the regulations any acquisition or disposal is excluded from those which are to be disregarded for the purposes of capital gains tax.

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- (7) In this section “modifications” includes exceptions and omissions; and any power under this section to provide for an enactment to have effect with modifications in any case shall include power to provide for it not to apply (if it otherwise would do) in that case.
- (8) References in this section to a case involving an arrangement for the sale and repurchase of securities are references to any case where—
  - (a) a person makes a sale of any securities under any agreement (“the original sale”); and
  - (b) that person or a person connected with him either—
    - (i) is required under that agreement or any related agreement to buy them back; or
    - (ii) acquires, under that agreement or any related agreement, an option to buy them back.
- (9) Section 730B shall apply for the purposes of this section as it applies for the purposes of section 730A.]

**Textual Amendments**

**F40** Ss. 737D, 737E inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 83(1)

**738 Power to amend sections 732, 735 and 737.**

- (1)<sup>M86</sup>The Board may by regulations provide for all or any of the following—
  - (a) that section 732(2) shall not apply unless the subsequent sale is carried out in compliance with further conditions specified in the regulations;
  - (b) that section 732(6) shall have effect as if the reference to the Stock Exchange in paragraph (a) were to any recognised investment exchange or to any of those exchanges specified in the regulations, and as if the reference to the Council of the Stock Exchange in paragraph (b) were to the investment exchange concerned;
  - (c) that for section 735(3) and (5) (which refer to the Stock Exchange Daily Official List) there shall be substituted such provisions as the Board think fit to take account of recognised investment exchanges.

Regulations under this subsection shall apply where the subsequent sale is carried out by the first buyer on or after such day as is specified in the regulations.

<sup>F41</sup>(2) .....

- (3)<sup>M87</sup>The Board may by regulations substitute for subsection (3) of section 737 a provision that subsection (1) of that section shall not apply to such persons and in such circumstances as are specified in the substituted provision, and make such incidental and consequential provisions (which may include the amendment of other provisions of section 737) as appear to the Board to be appropriate.
- (4)<sup>M88</sup>Regulations under [<sup>F42</sup>subsection] (3) above shall apply where the [<sup>F43</sup>contract or other arrangements for the transfer of securities] is made on or after such day as is specified in the regulations.

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- (5)<sup>M89</sup> In this section “recognised investment exchange” means a recognised investment exchange within the meaning of the<sup>M90</sup> Financial Services Act 1986.

#### Textual Amendments

- F41** S. 738(2) repealed (with effect as mentioned in s. 58(3) of the repealing Act) by Finance Act 1991 (c. 31, SIF 63:1), ss. 58(2), 123, Sch. 13 para. 4, **Sch. 19 Pt. V**, Note 9; S.I. 1992/1346, **reg. 5**
- F42** Word in s. 738(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 4(a)**(with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified)
- F43** Words in s. 738(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 4(b)**(with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified)

#### Marginal Citations

- M86** Source—1986 Sch.18 4
- M87** Source—1986 Sch.18 9(1)(a), (c)
- M88** Source—1986 Sch.18 6(6), 9(2)
- M89** Source—1986 Sch.18 10(2)
- M90** 1986 c. 60.

## CHAPTER III

### TRANSFER OF ASSETS ABROAD

#### 739 Prevention of avoidance of income tax.

<sup>M91</sup>(1) Subject to section 747(4)(b), the following provisions of this section shall have effect for the purpose of preventing the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue or in consequence of which, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled outside the United Kingdom.

(2) Where by virtue or in consequence of any such transfer, either alone or in conjunction with associated operations, such an individual has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a person resident or domiciled outside the United Kingdom which, if it were income of that individual received by him in the United Kingdom, would be chargeable to income tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of that individual for all purposes of the Income Tax Acts.

(3) Where, whether before or after any such transfer, such an individual receives or is entitled to receive any capital sum the payment of which is in any way connected with the transfer or any associated operation, any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a person resident or domiciled outside the United Kingdom shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of that individual for all purposes of the Income Tax Acts.

(4) In subsection (3) above “capital sum” means, subject to subsection (5) below—

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- (a) any sum paid or payable by way of loan or repayment of a loan, and
  - (b) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.
- (5) For the purposes of subsection (3) above, there shall be treated as a capital sum which an individual receives or is entitled to receive any sum which a third person receives or is entitled to receive at the individual's direction or by virtue of the assignment by him of his right to receive it.
- (6) Income shall not by virtue of subsection (3) above be deemed to be that of an individual for any year of assessment by reason only of his having received a sum by way of loan if that sum has been wholly repaid before the beginning of that year.

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

**C49** See 1989 s.110—*residence of trustees*; and s.111—*residence of personal representatives*.

**C50** Ss. 739, 740 modified (with effect in accordance with s. 105(1) of the modifying Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 13 para. 12](#) (with [Sch. 13 para. 16](#), [Sch. 15](#))

**Marginal Citations**

**M91** Source—1970 s.478(1), (2), (2A), (2B); 1981 s.46(3), (4)

**740 Liability of non-transferors.**

<sup>M92</sup>(1) This section has effect where—

- (a) by virtue or in consequence of a transfer of assets, either alone or in conjunction with associated operations, income becomes payable to a person resident or domiciled outside the United Kingdom; and
  - (b) an individual ordinarily resident in the United Kingdom who is not liable to tax under section 739 by reference to the transfer receives a benefit provided out of assets which are available for the purpose by virtue or in consequence of the transfer or of any associated operations.
- (2) Subject to the provisions of this section, the amount or value of any such benefit as is mentioned in subsection (1) above, if not otherwise chargeable to income tax in the hands of the recipient, shall—
- (a) to the extent to which it falls within the amount of relevant income of years of assessment up to and including the year of assessment in which the benefit is received, be treated for all the purposes of the Income Tax Acts as the income of the individual for that year;
  - (b) to the extent to which it is not by virtue of this subsection treated as his income for that year and falls within the amount of relevant income of the next following year of assessment, be treated for those purposes as his income for the next following year,

and so on for subsequent years, taking the reference in paragraph (b) to the year mentioned in paragraph (a) as a reference to that and any other year before the subsequent year in question.

- (3) Subject to subsection (7) below and section 744(1), the relevant income of a year of assessment, in relation to an individual, is any income which arises in that year to a person resident or domiciled outside the United Kingdom and which by virtue or in consequence of the transfer or associated operations referred to in subsection (1)

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above can directly or indirectly be used for providing a benefit for the individual or for enabling a benefit to be provided for him.

- (4) Income tax chargeable by virtue of this section shall be charged under Case VI of Schedule D.
- (5) An individual who is domiciled outside the United Kingdom shall not, in respect of any benefit not received in the United Kingdom, be chargeable to tax under this section by reference to relevant income which is such that if he had received it he would not, by reason of his being so domiciled, have been chargeable to income tax in respect of it; and subsections (6) to (9) of section 65 shall apply for the purposes of this subsection as they would apply for the purposes of subsection (5) of that section if the benefit were income arising from possessions outside the United Kingdom.
- (6) Where—
- (a) the whole or part of the benefit received by an individual in a year of assessment is a capital payment within the meaning of section 80 or 81(2) of the Finance Act 1981 (chargeable gains: non-resident and migrant settlements) (because not falling within the amount of relevant income referred to in paragraph (a) of subsection (2) above); and
  - (b) chargeable gains are by reason of that payment treated under either of those sections as accruing to him in that or a subsequent year,
- paragraph (b) of that subsection shall apply in relation to any year of assessment (“a year of charge”) after one in which chargeable gains have been so treated as accruing to him as if a part of the amount or value of the benefit corresponding to the amount of those gains had been treated under that subsection as his income for a year of assessment before the year of charge.
- (7) This section applies irrespective of when the transfer or associated operations referred to in subsection (1) above took place, but applies only to relevant income arising on or after 10th March 1981.

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

**C51** See 1989 s.110—*residence of trustees; and s.111—residence of personal representatives.*

**C52** See 1981 s.83(3)—*treatment of capital sums for capital gains tax.*

**Marginal Citations**

**M92** Source—1981 s.45(1)-(6), (9)

**741 Exemption from sections 739 and 740.**

<sup>M93</sup>Sections 739 and 740 shall not apply if the individual shows in writing or otherwise to the satisfaction of the Board either—

- (a) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them were effected; or
- (b) that the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

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The jurisdiction of the Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in exercise of their functions under this section.

**Marginal Citations**

**M93** Source—1970 s.478(3); 1981 s.45(7)

VALID FROM 05/12/2005

**[<sup>F44</sup>741A] Exemption from sections 739 and 740 (transactions on or after 5th December 2005)**

- (1) The individual is not liable to income tax by virtue of section 739 or 740 for the year of assessment by reference to the relevant transactions if he satisfies an officer of the Board—
  - (a) that Condition A is met, or
  - (b) in a case where Condition A is not met, that Condition B is met.
- (2) Condition A is that it would not be reasonable to draw the conclusion, from all the circumstances of the case, that the purpose of avoiding liability to taxation was the purpose, or one of the purposes, for which the relevant transactions or any of them were effected.
- (3) Condition B is that—
  - (a) all the relevant transactions were genuine commercial transactions, and
  - (b) it would not be reasonable to draw the conclusion, from all the circumstances of the case, that any one or more of those transactions was more than incidentally designed for the purpose of avoiding liability to taxation.
- (4) The intentions and purposes of any person who, whether or not for consideration,—
  - (a) designs or effects the relevant transactions or any of them, or
  - (b) provides advice in relation to the relevant transactions or any of them,are to be taken into account in determining the purposes for which those transactions or any of them were effected.
- (5) A relevant transaction is a commercial transaction only if it is effected—
  - (a) in the course of a trade or business, or
  - (b) with a view to setting up and commencing a trade or business,and, in either case, for the purposes of that trade or business.
- (6) For that purpose, the making and managing of investments, or the making or managing of investments, is not a trade or business except to the extent that—
  - (a) the person by whom it is done, and
  - (b) the person for whom it is done,are independent persons dealing at arm's length.
- (7) In this section—

“commercial transaction” does not include—



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- (a) a transaction on terms other than those that would have been made between independent persons dealing at arm's length, or
  - (b) a transaction that would not have been entered into between independent persons dealing at arm's length;
- “independent persons” means persons who are not connected with each other (within the meaning given by section 839);
- “relevant transactions” means—
- (a) the transfer, and
  - (b) any associated operations;
- “revenue” includes taxes, duties and national insurance contributions;
- “taxation” includes any revenue for whose collection and management the Commissioners for Her Majesty's Revenue and Customs are responsible.
- (8) Any associated operation that would not (apart from this subsection) fall to be taken into account for the purposes of this section must be taken into account for those purposes if, were it to be so taken into account, the conditions in subsection (1) above would be failed by reference to—
- (a) that associated operation, or
  - (b) that associated operation taken together with the transfer or any one or more other associated operations.
- (9) The jurisdiction of the Special Commissioners on any appeal includes jurisdiction to review any decision taken by an officer of the Board in exercise of the officer's functions under this section.
- (10) This section is subject to sections 741B and 741C (application of section 741 and this section etc).]

#### Textual Amendments

**F44** S. 741A inserted (5.12.2005) by [Finance Act 2006 \(c. 25\)](#), [Sch. 7 para. 3](#)

VALID FROM 05/12/2005

#### [<sup>F45</sup>741B] Application of sections 741 and 741A

- (1) This section makes provision with respect to the application for the year of assessment of—
- (a) section 741,
  - (b) section 741A, or
  - (c) section 741C,
- in the case of the individual and the relevant transactions.
- (2) In this section—
- “new transaction” means a relevant transaction effected on or after the relevant date;
- “old transaction” means a relevant transaction effected before the relevant date;
- “the relevant date” means 5th December 2005;



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- “relevant transactions” means—
- (a) the transfer, and
  - (b) any associated operations.
- (3) If all the relevant transactions are old transactions, section 741 is the provision to be applied.
- (4) If all the relevant transactions are new transactions, section 741A is the provision to be applied.
- (5) If—
- (a) any one or more of the relevant transactions are old transactions, and
  - (b) any one or more of the relevant transactions are new transactions,
- section 741C is the provision to be applied.]

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#### Textual Amendments

**F45** Ss. 741B, 741C inserted (5.12.2005) by Finance Act 2006 (c. 25), Sch. 7 para. 4

VALID FROM 05/12/2005

#### [<sup>F45</sup>741C] Cases where there are both old transactions and new transactions

- (1) This section applies by virtue of section 741B if the case falls within subsection (5) of that section.
- (2) Sections 739 and 740 do not apply, unless subsection (3) below applies.
- (3) This subsection applies if—
  - (a) the conditions in section 741(1) are failed by reference to the old transactions or any of them, or
  - (b) the conditions in section 741A(1) are failed by reference to the new transactions or any of them.
- (4) Where subsection (3) above applies, the general rule is that sections 739 and 740 apply as they would have applied apart from any exemption by virtue of sections 741 to 741C.
- (5) In any case where subsection (3) above applies by virtue only of paragraph (b) of that subsection, the general rule has effect subject to, and in accordance with, the Rules in subsections (6) to (8) below.
- (6) Rule 1 is that, for the purposes of section 739(2) or (3), any income arising before the relevant date must not be brought into account as income of the person resident or domiciled outside the United Kingdom.
- (7) Rule 2 is that for the purposes of section 740, where—
  - (a) a benefit is received by the individual in a year of assessment ending after the relevant date, and
  - (b) relevant income of years of assessment up to and including that year falls to be determined,

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the general rule requires years ending before the relevant date to be brought into account as well as years ending after that date.

- (8) Rule 3 is that, for the purposes of section 740, a benefit received by the individual in the year 2005-06 is to be left out of account to the extent that, on a time apportionment basis, it fell to be enjoyed in any part of the year that falls before the relevant date.
- (9) This section is to be read as one with section 741B.]

#### Textual Amendments

**F45** Ss. 741B, 741C inserted (5.12.2005) by [Finance Act 2006 \(c. 25\)](#), [Sch. 7 para. 4](#)

VALID FROM 05/12/2005

#### [<sup>F46</sup>741D] **Section 739: just and reasonable apportionment in certain cases**

- (1) This section applies where—
- (a) an individual is liable to tax by virtue of section 739 for a year of assessment (the “taxable year”), but
  - (b) the conditions in subsections (2) to (4) below are met.
- (2) Condition 1 is that since the making of the transfer there have been one or more years of assessment when the circumstances were such that, so far as relating to such of the relevant transactions as were effected before the end of the year, the individual—
- (a) was not liable to tax by virtue of section 739, or
  - (b) would not have been liable to tax by virtue of section 739 if there had been any deemed income of his under that section,
- because an appropriate exemption applied or, in a case falling within paragraph (b) above, would have applied.
- (3) Condition 2 is that the individual is liable to tax under section 739 in the taxable year in consequence of Condition B in section 741A(3) not being met.
- (4) Condition 3 is that the income by reference to which the individual is liable to tax for the taxable year is attributable—
- (a) partly to relevant transactions by reference to which the appropriate exemption applied for the last exempt year of assessment, and
  - (b) partly to associated operations not falling within paragraph (a) above (“chargeable operations”).
- (5) For the purposes of this section, a year of assessment is “exempt” if it is one of the years of assessment mentioned in subsection (2) and there is no earlier year of assessment for which—
- (a) the individual was liable to tax by virtue of section 739, or
  - (b) the individual would have been liable to tax by virtue of section 739, if there had been any deemed income of his under that section.
- (6) Where this section applies, the liability of the individual is to be reduced as if it fell to be determined by reference to only so much of the income as appears to an officer

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of the Board to be justly and reasonably attributable to chargeable operations in all the circumstances of the case.

- (7) The facts and matters that may be taken into account in determining for the purposes of subsection (6) above whether income may be regarded as justly and reasonably attributable to chargeable operations include whether, and to what extent, the chargeable operations or any of them directly or indirectly affect any of the following—
- (a) the character, description or amount of any income of any person,
  - (b) any person's power to enjoy any income,
  - (c) the character, description or amount of any income which a person has power to enjoy.
- (8) The jurisdiction of the Special Commissioners on any appeal includes jurisdiction to review any decision taken by an officer of the Board in exercise of the officer's functions under this section.
- (9) In this section—
- “appropriate exemption” means exemption by virtue of—
    - (a) paragraph (b) of section 741(1), or
    - (b) Condition B in section 741A(3);
  - “relevant transactions” means—
    - (a) the transfer, and
    - (b) any associated operations.]

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#### Textual Amendments

F46 S. 741D inserted (5.12.2005) by Finance Act 2006 (c. 25), Sch. 7 para. 5

### 742 Interpretation of sections 739 to 741.

- (1) <sup>M94</sup>For the purposes of sections 739 to 741 “an associated operation” means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing, whether directly or indirectly, any of the assets transferred, or to the income arising from any such assets, or to any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets.
- (2) An individual shall, for the purposes of section 739, be deemed to have power to enjoy income of a person resident or domiciled outside the United Kingdom if—
- (a) the income is in fact so dealt with by any person as to be calculated, at some point of time, and whether in the form of income or not, to enure for the benefit of the individual; or
  - (b) the receipt or accrual of the income operates to increase the value to the individual of any assets held by him or for his benefit; or
  - (c) the individual receives or is entitled to receive, at any time, any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which directly or indirectly represent that income; or

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- (d) the individual may, in the event of the exercise or successive exercise of one or more powers, by whomsoever exercisable and whether with or without the consent of any other person, become entitled to the beneficial enjoyment of the income; or
  - (e) the individual is able in any manner whatsoever, and whether directly or indirectly, to control the application of the income.
- (3) In determining whether an individual has power to enjoy income within the meaning of subsection (2) above—
- (a) regard shall be had to the substantial result and effect of the transfer and any associated operations, and
  - (b) all benefits which may at any time accrue to the individual (whether or not he has rights at law or in equity in or to those benefits) as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.
- (4) <sup>M95</sup>Subsection (5) below applies where a person resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls would, at the end of the interest period, have been treated under section 714(2) as receiving annual profits or gains or annual profits or gains of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period.
- (5) Sections 739 to 741 shall have effect as if the amount which the person would be treated as receiving or the additional amount (as the case may be) were income becoming payable to him; and, accordingly, any reference in those sections to income of (or payable or arising to) such a person shall be read as including a reference to such an amount.
- (6) Where income of a person resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls consists of interest—
- (a) which falls due at the end of the interest period, and
  - (b) which would have been treated under section 714(5) as reduced by an allowance or an allowance of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period,
- then for the purposes of sections 739 to 741, the interest shall be treated as being reduced by the amount of the allowance or by the additional amount (as the case may be).
- (7) In subsections (4) to (6) above “interest period” has the meaning given by section 711.
- (8) <sup>M96</sup>For the purposes of sections 739 to 741, any body corporate incorporated outside the United Kingdom [<sup>F47</sup>, or regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 as resident in a territory outside the United Kingdom] shall be treated as if it were resident outside the United Kingdom whether it is so resident or not.
- (9) For the purposes of sections 739 to 741—
- (a) a reference to an individual shall be deemed to include the wife or husband of the individual;
  - (b) “assets” includes property or rights of any kind and “transfer”, in relation to rights, includes the creation of those rights;

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- (c) “benefit” includes a payment of any kind;
  - (d) references to income of a person resident or domiciled outside the United Kingdom shall, where the amount of the income of a company for any year or period has been apportioned under section 423, include references to so much of the income of the company for that year or period as is equal to the amount so apportioned to that person, and that amount shall be treated as increased by such proportion of itself as corresponds to the rate of advance corporation tax applicable to a distribution made at the end of the accounting period to which the apportionment relates<sup>F48</sup>,
  - (e) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other person to whom, those assets, that income or those accumulations are or have been transferred.
- (10) Any amount which by virtue of subsection (9)(d) above is treated as the income of any person for the purposes of sections 739 to 741 shall also be treated for those purposes as payable to that person<sup>F48</sup>.

#### Textual Amendments

**F47** 1990 s.66 in relation to transfers of assets and associated operations on or after 20 March 1990.

**F48** Repealed by 1989 s.187 and Sch.17 Part V in relation to accounting periods beginning after 31 March 1989.

#### Marginal Citations

**M94** Source—1970 s.478(4)-(6); 1981 ss.45(7), 46(5)

**M95** Source—1985 Sch. 23 39

**M96** Source—1970 s.478(7)-(9); 1972 Sch.24 27; 1981 s.46(6)

### 743 Supplemental provisions.

- <sup>M97</sup>(1) Income tax at the basic rate shall not be charged by virtue of section 739 in respect of income which has borne tax at the basic rate by deduction or otherwise but, subject to that, income tax so chargeable shall be charged under Case VI of Schedule D.
- (2) In computing the liability to income tax of an individual chargeable by virtue of section 739, the same deductions and reliefs shall be allowed as would have been allowed if the income deemed to be his by virtue of that section had actually been received by him.
- (3) An individual who is domiciled outside the United Kingdom shall not be chargeable to tax in respect of any income deemed to be his by virtue of that section if he would not, by reason of his being so domiciled, have been chargeable to tax in respect of it if it had in fact been his income.
- (4) Where an individual has been charged to income tax on any income deemed to be his by virtue of section 739 and that income is subsequently received by him, it shall be deemed not to form part of his income again for the purposes of the Income Tax Acts.
- (5) In any case where an individual has for the purposes of that section power to enjoy income of a person abroad by reason of his receiving any such benefit as is referred to in section 742(2)(c), then notwithstanding anything in subsection (1) above, the individual shall be chargeable to income tax by virtue of section 739 for the year of

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assessment in which the benefit is received on the whole of the amount or value of that benefit except in so far as it is shown that the benefit derives directly or indirectly from income on which he has already been charged to tax for that or a previous year of assessment.

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

**C53** See 1970(M) s.31(3)—*appeals to go to Special Commissioners.*

**Marginal Citations**

**M97** Source—1970 s.480; 1971 Sch.6 72; 1981 s.46(7)

**744 No duplication of charge.**

<sup>M98</sup>(1) No amount of income shall be taken into account more than once in charging tax under the provisions of sections 739 and 740; and where there is a choice as to the persons in relation to whom any amount of income can be so taken into account—

- (a) it shall be so taken into account in relation to such of them, and if more than one in such proportions respectively, as appears to the Board to be just and reasonable; and
- (b) the jurisdiction of the Special Commissioners on any appeal against an assessment charging tax under those provisions shall include jurisdiction to review any relevant decision taken by the Board under this subsection.

(2) In subsection (1) above references to an amount of income taken into account in charging tax are—

- (a) in the case of tax which under section 739 is charged on income, to the amount of that income;
- (b) in the case of tax charged under that section by virtue of section 743(5), to an amount of the income out of which the benefit is provided equal to the amount or value of the benefit charged;
- (c) in the case of tax charged under section 740, to the amount of relevant income taken into account under subsection (2) of that section in charging the benefit.

**Marginal Citations**

**M98** Source—1981 s.46(1), (2)

**745 Power to obtain information.**

<sup>M99</sup>(1) The Board may by notice require any person to furnish them within such time as they may direct (not being less than 28 days) with such particulars as they think necessary for the purposes of this Chapter.

(2) The particulars which a person must furnish under this section, if he is required by such a notice so to do, include particulars—

- (a) as to transactions with respect to which he is or was acting on behalf of others;
- (b) as to transactions which in the opinion of the Board it is proper that they should investigate for the purposes of this Chapter notwithstanding that, in

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the opinion of the person to whom the notice is given, no liability to tax arises under this Chapter; and

- (c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions of a description specified in the notice.
- (3) Notwithstanding anything in subsection (2) above, a solicitor shall not be deemed for the purposes of paragraph (c) of that subsection to have taken part in a transaction by reason only that he has given professional advice to a client in connection with that transaction, and shall not, in relation to anything done by him on behalf of his client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of the client and also—
- (a) in the case of anything done by the solicitor in connection with the transfer of any asset by or to an individual ordinarily resident in the United Kingdom to or by any such body corporate as is mentioned in subsection (4) below, or in connection with any associated operation in relation to any such transfer, the names and addresses of the transferor and the transferee or of the persons concerned in the associated operations, as the case may be;
- (b) in the case of anything done by the solicitor in connection with the formation or management of any such body corporate as is mentioned in subsection (4) below, the name and address of the body corporate;
- (c) in the case of anything done by the solicitor in connection with the creation, or with the execution of the trusts, of any settlement by virtue or in consequence of which income becomes payable to a person resident or domiciled outside the United Kingdom, the names and addresses of the settlor and of that person.
- (4) The bodies corporate mentioned in subsection (3) above are bodies corporate resident or incorporated outside the United Kingdom [<sup>F49</sup>, or regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 as resident in a territory outside the United Kingdom,] which are, or if resident in the United Kingdom would be, close companies, but not [<sup>F50</sup> companies whose business consists wholly or mainly of the carrying on of a trade or trades.].
- (5) Nothing in this section shall impose on any bank the obligation to furnish any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, unless the bank has acted or is acting on behalf of the customer in connection with the formation or management of any such body corporate as is mentioned in subsection (4) above or in connection with the creation, or with the execution of the trusts, of any such settlement as is mentioned in subsection (3)(c) above.
- (6) In this section “settlement” and “settlor” have the meanings given by section 681(4).

#### Textual Amendments

**F49** 1990 s.66. *Where the amendment of subs.(4) relates to subs.3(b) and (5) it shall come into force in relation to transfers of assets and associated operations on or after 20 March 1990.*

**F50** 1989 s.107 and Sch.12 para.17. *Previously*  
“trading companies (as defined in paragraph 7 of Schedule 19)”.

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

- C54** See—1981 s.84—s.745 to have effect for 1981 ss.80 to 82 (*capital gains of non-resident settlements*). 1984 Sch.14 para.15(2)—s.745 to have effect for 1984 Sch.14 para.15(1) as for s.745, but references to Part XVII Ch.III to be construed as references to 1984 s.70 and Sch.14.
- C55** S. 745(2)-(5) applied (with modifications) (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. 98(2), 289 (with ss. 60, 101(1), 171, 201(3))
- C56** See S.I. 1989 No. 1343 (N.I.14) Art.10(2) and Sch.1 para.38(3) for construction in the case of a solicitor who is an officer or employee of a recognised body.

#### **Marginal Citations**

**M99** Source—1970 s.481; 1972 Sch.24 28; 1981 s.45(8)

### **746 Persons resident in the Republic of Ireland.**

<sup>M100</sup>In relation to amounts which by virtue of any provision of section 34, 35 or 36 would, in the case of a person resident in the Republic of Ireland and not resident in the United Kingdom, be included in his income if he were not resident in the Republic of Ireland, sections 739, 742(1) to (3), 743 and 745 shall apply—

- (a) as if his income included those amounts; and
- (b) as if references to an individual included references to any person (and so that in accordance with section 9 those sections then apply for corporation tax as well as for income tax);

but section 741 shall not apply in any such case.

#### **Marginal Citations**

**M100** Source—1970 s.479.

## **CHAPTER IV**

### **CONTROLLED FOREIGN COMPANIES**

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

**C57** Pt. XVII Ch. IV (ss. 747-756) modified (27.7.1993) by [1993 c. 34, s. 119\(3\)](#)

### **747 Imputation of chargeable profits and creditable tax of controlled foreign companies**

<sup>M101</sup>(1) If the Board have reason to believe that in any accounting period a company—

- (a) is resident outside the United Kingdom, and
- (b) is controlled by persons resident in the United Kingdom, and
- (c) is subject to a lower level of taxation in the territory in which it is resident,

and the Board so direct, the provisions of this Chapter shall apply in relation to that accounting period.



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- (2) A company which falls within paragraphs (a) to (c) of subsection (1) above is in this Chapter referred to as a “controlled foreign company”.
- (3) Where, by virtue of a direction under subsection (1) above, the provisions of this Chapter apply in relation to an accounting period of a controlled foreign company, the chargeable profits of that company for that period and its creditable tax (if any) for that period shall each be apportioned in accordance with section 752 among the persons (whether resident in the United Kingdom or not) who had an interest in that company at any time during that accounting period.
- (4) Where, on such an apportionment of a controlled foreign company’s chargeable profits for an accounting period as is referred to in subsection (3) above, an amount of those profits is apportioned to a company resident in the United Kingdom then, subject to subsection (5) below—
  - (a) a sum equal to corporation tax at the appropriate rate on that apportioned amount of profits, less the portion of the controlled foreign company’s creditable tax for that period (if any) which is apportioned to the resident company, shall be assessed on and recoverable from the resident company as if it were an amount of corporation tax chargeable on that company; and
  - (b) if, apart from this paragraph, section 739 would deem any sum forming part of the company’s chargeable profits for that accounting period to be the income of an individual for the purposes of the Income Tax Acts, that section shall not apply to such portion of that sum as corresponds to the portion of those chargeable profits which is apportioned to companies which are resident in the United Kingdom and which, by virtue of paragraph (a) above, have a liability to tax in respect thereof;and for the purposes of paragraph (a) above “the appropriate rate” means the rate of corporation tax applicable to profits of that accounting period of the resident company in which ends the accounting period of the controlled foreign company to which the direction under subsection (1) above relates or, if there is more than one such rate, the average rate over the whole of that accounting period of the resident company.
- (5) Tax shall not, by virtue of subsection (4) above, be assessed and recoverable from a company resident in the United Kingdom unless, on the apportionment in question, the aggregate of—
  - (a) the amount of the controlled foreign company’s chargeable profits for the accounting period in question which is apportioned to the resident company, and
  - (b) any amounts of those chargeable profits which are apportioned to persons who are connected or associated with the resident company,is at least 10 per cent. of the total of those chargeable profits.
- (6) In relation to a company resident outside the United Kingdom—
  - (a) any reference in this Chapter to its chargeable profits for an accounting period is a reference to the amount which, on the assumptions in Schedule 24, would be the amount of the total profits of the company for that period on which, after allowing for any deductions available against those profits, corporation tax would be chargeable; and
  - (b) any reference in this Chapter to profits does not include a reference to chargeable gains but otherwise (except as provided by paragraph (a) above) has the same meaning as it has for the purposes of corporation tax.

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### Marginal Citations

M101 Source—1984 s.82

VALID FROM 01/05/1995

### [<sup>F51</sup>747A] Special rule for computing chargeable profits.

- (1) Subsection (2) below applies where for the purposes of this Chapter a company's chargeable profits fall to be determined for—
  - (a) the first relevant accounting period of the company, or
  - (b) any subsequent accounting period of the company.
- (2) Notwithstanding any other rule (whether statutory or otherwise) the chargeable profits for any such period shall be computed and expressed in the currency used in the accounts of the company for its first relevant accounting period.
- (3) Subsection (4) below applies where for the purposes of this Chapter a company's chargeable profits fall to be determined for any accounting period of the company which—
  - (a) begins on or after the appointed day, and
  - (b) falls before the company's first relevant accounting period.
- (4) Notwithstanding any other rule (whether statutory or otherwise) the chargeable profits for any such period shall be computed and expressed in the currency used in the accounts of the company for the accounting period concerned.
- (5) For the purposes of this section the first relevant accounting period of the company shall be found in accordance with subsections (6) to (8) below.
- (6) Where a direction has been given under section 747 as regards an accounting period of the company which begins before its commencement day, its first relevant accounting period is its accounting period which begins on its commencement day.
- (7) Where the company is a trading company and subsection (6) above does not apply, its first relevant accounting period is its first accounting period which begins on or after its commencement day and as regards which a direction has been given under section 747.
- (8) Where the company is not a trading company and subsection (6) above does not apply, its first relevant accounting period is its first accounting period which begins on or after its commencement day and as regards which—
  - (a) a direction has been given under section 747, or
  - (b) it can reasonably be assumed that a direction would have been given under section 747 but for the fact that it pursued, within the meaning of Part I of Schedule 25, an acceptable distribution policy.
- (9) For the purposes of this section—
  - (a) a company's commencement day is the first day of its first accounting period to begin after the day preceding the appointed day;
  - (b) the appointed day is such day as may be appointed under section 165(7)(b) of the <sup>M102</sup>Finance Act 1993 (which relates to exchange gains and losses).

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- (10) References in this section to the accounts of a company—
- (a) are to the accounts which the company is required by the law of its home State to keep, or
  - (b) if the company is not required by the law of its home State to keep accounts, are to the accounts of the company which most closely correspond to the individual accounts which companies formed and registered under the <sup>M103</sup>Companies Act 1985 are required by that Act to keep;
- and for the purposes of this subsection the home State of a company is the country or territory under whose law the company is incorporated or formed.]

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**Textual Amendments**

**F51** S. 747A inserted (1.5.1995) by Finance Act 1995 (c. 4), Sch. 25 para. 2

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**Marginal Citations**

**M102** 1993 c. 34.

**M103** 1985 c. 6.

## 748 Limitations on direction-making power

- <sup>M104</sup>(1) No direction may be given under section 747(1) with respect to an accounting period of a controlled foreign company if—
- (a) in respect of that period the company pursues, within the meaning of Part 1 of Schedule 25, an acceptable distribution policy; or
  - (b) throughout that period the company is, within the meaning of Part II of that Schedule, engaged in exempt activities; or
  - (c) the public quotation condition set out in Part III of that Schedule is fulfilled with respect to that period; or
  - (d) the chargeable profits of the accounting period do not exceed £20,000 or, if the accounting period is less than 12 months, a proportionately reduced amount.
- (2) Without prejudice to any right of appeal, nothing in subsection (1) above prevents the Board from giving a direction with respect to an accounting period after the end of that period but before it is known whether the company has paid such a dividend as establishes that it is pursuing an acceptable distribution policy in respect of the profits arising in that period.
- (3) Notwithstanding that none of paragraphs (a) to (d) of subsection (1) above applies to an accounting period of a controlled foreign company, no direction may be given under section 747(1) with respect to that accounting period if it appears to the Board that—
- (a) in so far as any of the transactions the results of which are reflected in the profits arising in that accounting period, or any two or more of those transactions taken together, achieved a reduction in United Kingdom tax, either the reduction so achieved was minimal or it was not the main purpose or one of the main purposes of that transaction or, as the case may be, of those transactions taken together to achieve that reduction, and
  - (b) it was not the main reason or, as the case may be, one of the main reasons for the company's existence in that accounting period to achieve a reduction in United Kingdom tax by a diversion of profits from the United Kingdom,

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and Part IV of Schedule 25 shall have effect with respect to the preceding provisions of this subsection.

#### Marginal Citations

M104 Source—1984 s.83

VALID FROM 19/07/2011

#### <sup>F52</sup>748Z Exclusion of small profits exemptions

- (1) Nothing in section 748(1)(da) prevents an apportionment falling to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company (“X”) if condition A, B or C is met.
- (2) Condition A is that at any time before the end of the relevant accounting period a scheme is entered into and—
  - (a) in the absence of this subsection, in consequence of the scheme, section 748(1)(da) would apply to prevent an apportionment falling to be made as regards the relevant accounting period of X, and
  - (b) the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to secure that section 748(1)(da) prevents an apportionment falling to be made as regards that period, or that period and one or more other accounting periods of X.
- (3) Condition B is that at any time before the end of the relevant accounting period a scheme is entered into and—
  - (a) in consequence of the scheme profits are shifted to X from another company (“Y”),
  - (b) the main purpose or one of the main purposes of any party to the scheme in entering into the scheme is to ensure that section 748(1)(da) prevents an apportionment falling to be made as regards the chargeable profits of one or more controlled foreign companies for one or more accounting periods, and
  - (c) the relevant accounting period of X falls wholly or partly within that accounting period or those accounting periods.
- (4) For the purposes of subsection (3), profits are shifted to X from Y if it is reasonable to suppose that in the absence of the scheme, and any similar scheme, the whole or a part of the income which is reflected in X's profits would have been reflected in Y's profits.
- (5) Condition C is that, in determining X's chargeable profits for the relevant accounting period—
  - (a) [<sup>F53</sup>section 418(5) of CTA 2009 (loan relationships involving connected debtor and creditor where debits exceed credits) has effect so as to treat X, for the purposes of Part 5 of that Act, as bringing into account for that period credits in respect of a loan relationship, or]
  - (b) Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

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(6) For the purposes of this section—

“apportionment” means an apportionment under section 747(3);

“scheme” means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions.]

#### Textual Amendments

**F52** S. 748ZA inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), Sch. 12 para. 5

**F53** S. 748ZA(5)(a) omitted (with effect in accordance with Sch. 5 paras. 6(3), 7(3)(4) of the repealing Act) by Finance Act 2011 (c. 11), Sch. 5 para. 7(2)(a)

VALID FROM 24/07/2002

#### [<sup>F54</sup>748A Territorial exclusions from exemption under section 748

- (1) Nothing in section 748 prevents an apportionment under section 747(3) falling to be made as regards an accounting period of a controlled foreign company if the company—
  - (a) is a company incorporated in a territory to which this section applies as respects that accounting period; or
  - (b) is at any time in that accounting period liable to tax in such a territory by reason of domicile, residence or place of management; or
  - (c) at any time in that accounting period carries on business through a branch or agency in such a territory.
- (2) The condition in subsection (1)(c) above is not satisfied as regards an accounting period of a controlled foreign company if the business carried on by the company in that period through branches or agencies in territories to which this section applies, taken as a whole, is only a minimal part of the whole of the business carried on by the company in that period.
- (3) The territories to which this section applies as respects an accounting period of a controlled foreign company are those specified as such in regulations made by the Treasury.
- (4) Regulations under subsection (3) above—
  - (a) may make different provision for different cases or with respect to different territories; and
  - (b) may contain such incidental, supplemental, consequential or transitional provision as the Treasury may think fit.
- (5) A statutory instrument containing regulations under subsection (3) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.]

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### Textual Amendments

**F54** S. 748A inserted (with effect in accordance with s. 89(3) of the amending Act) by Finance Act 2002 (c. 23), s. 89(2)

## 749 Residence and interest.

<sup>M105</sup>(1) Subject to subsections (2) and (4) below, in any accounting period in which a company is resident outside the United Kingdom, it shall be regarded for the purposes of this Chapter as resident in that territory in which, throughout that period, it is liable to tax by reason of domicile, residence or place of management.

(2) If, in the case of any company, there are in any accounting period two or more territories falling within subsection (1) above, the company shall in that accounting period be regarded for the purposes of this Chapter as resident in only one of them, namely—

- (a) if, throughout the accounting period, the company's place of effective management is situated in one of those territories only, in that territory; and
- (b) if, throughout the accounting period, the company's place of effective management is situated in two or more of those territories, in that one of them in which, at the end of the accounting period, the greater amount of the company's assets is situated; and
- (c) if neither paragraph (a) nor paragraph (b) above applies, in that one of the territories falling within subsection (1) above in which, at the end of the accounting period, the greater amount of the company's assets is situated; and
- (d) if paragraph (a) above does not apply and neither paragraph (b) nor paragraph (c) above produces one, and only one, of those territories, in that one of them which may be specified in a direction under section 747(1) relating to that accounting period.

(3) If, in the case of any company, there is in any accounting period no territory falling within subsection (1) above, then, for the purposes of this Chapter, it shall be conclusively presumed that the company is in that accounting period resident in a territory in which it is subject to a lower level of taxation.

(4) In any case where it becomes necessary for the purposes of subsection (2) above to determine in which of two or more territories the greater amount of a company's assets is situated at the end of an accounting period, account shall be taken only of those assets which, immediately before the end of that period, are situated in those territories and the amount of them shall be determined by reference to their market value at that time.

[<sup>F55</sup>(4A) For the purposes of this Chapter, any company which, though resident in the United Kingdom, is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 as resident in a territory outside the United Kingdom shall be treated as if it were resident outside the United Kingdom (and not resident in the United Kingdom).]

(5) For the purposes of this Chapter, the following persons have an interest in a controlled foreign company—

- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company,

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- (b) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption,
- (c) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit, and
- (d) any other person who, either alone or together with other persons, has control of the company,

and for the purposes of paragraph (b) above the definition of “distribution” in Part VI shall be construed without any limitation to companies resident in the United Kingdom.

- (6) References in subsection (5) above to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it; but a person whose entitlement to secure that any income or assets of the company will be applied as mentioned in paragraph (c) of that subsection is contingent upon a default of the company or any other person under any agreement shall not be treated as falling within that paragraph unless the default has occurred.
- (7) Without prejudice to subsection (5) above, the Board may, if they think it appropriate, treat a loan creditor of a controlled foreign company as having an interest in the company for the purposes of this Chapter.

#### Textual Amendments

**F55** S. 749(4A) inserted by Finance Act 1990 (c. 29), s.67(1)(4)

#### Marginal Citations

**M105** Source—1984 s.84

VALID FROM 31/07/1998

#### <sup>F56</sup>749A Elections and designations under section 749: supplementary provisions.

- (1) An election under paragraph (d) or a designation under paragraph (e) of section 749(3) shall have effect in relation to—
  - (a) the accounting period in relation to which it is made (“the original accounting period”), and
  - (b) each successive accounting period of the controlled foreign company in question which precedes the next one in which the eligible territories are different,and shall so have effect notwithstanding any change in the persons who have interests in the company or any change in the interests which those persons have in the company.
- (2) For the purposes of subsection (1)(b) above, an accounting period of the controlled foreign company is one in which the eligible territories are different if in the case of that accounting period—



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- (a) at least one of the two or more territories which fell within subsection (1) of section 749 in the original accounting period does not fall within that subsection; or
  - (b) some other territory also falls within that subsection.
- (3) Any election under section 749(3)(d)—
- (a) must be made by notice given to an officer of the Board;
  - (b) must be made no later than twelve months after the end of the controlled foreign company's accounting period in relation to which it is made;
  - (c) must state, as respects each of the persons making it, the percentage of the chargeable profits and creditable tax (if any) of the controlled foreign company for that accounting period which it is likely would be apportioned to him on an apportionment under section 747(3) if one were made;
  - (d) must be signed by the persons making it; and
  - (e) is irrevocable.
- (4) Nothing in—
- (a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or
  - (b) Schedule 1A to the Management Act (claims or elections not included in returns),
- shall apply, whether by virtue of section 754 or otherwise, to an election under section 749(3)(d).
- (5) A designation under section 749(3)(e) is irrevocable.
- (6) Where the Board make a designation under section 749(3)(e), notice of the making of the designation shall be given to every company resident in the United Kingdom which appears to the Board to have had an assessable interest in the controlled foreign company at any time during the accounting period of the controlled foreign company in relation to which the designation is made.
- (7) A notice under subsection (6) above shall specify—
- (a) the date on which the designation was made;
  - (b) the controlled foreign company to which the designation relates;
  - (c) the accounting period of the controlled foreign company in relation to which the designation is made; and
  - (d) the territory designated.
- (8) Subsection (9) of section 749 has effect for the purposes of subsection (6) above as it has effect for the purposes of subsection (8) of that section.]

#### **Textual Amendments**

**F56** Ss. 749-749B substituted for s. 749 (with effect in accordance with [Sch.17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 4](#); [S.I. 1998/3173](#), [art. 2](#)



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VALID FROM 31/07/1998

**[<sup>F56</sup>749B Interests in companies.**

- (1) For the purposes of this Chapter, the following persons have an interest in a company—
  - (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;
  - (b) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company;
  - (c) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit; and
  - (d) any other person who, either alone or together with other persons, has control of the company.
- (2) Rights which a person has as a loan creditor of a company do not constitute an interest in the company for the purposes of this Chapter.
- (3) For the purposes of subsection (1)(b) above, the definition of “distribution” in Part VI shall be construed without any limitation to companies resident in the United Kingdom.
- (4) References in subsection (1) above to being entitled to do anything apply where a person—
  - (a) is presently entitled to do it at a future date, or
  - (b) will at a future date be entitled to do it;but a person whose entitlement to secure that any income or assets of the company will be applied as mentioned in paragraph (c) of that subsection is contingent upon a default of the company or any other person under any agreement shall not be treated as falling within that paragraph unless the default has occurred.
- (5) Where a company has an interest in another company and a third person has, or two or more persons together have, an interest in the first company (as in a case where one company has a shareholding in a controlled foreign company and the first company is controlled by a third company or by two or more persons together) subsections (6) and (7) below apply.
- (6) Where this subsection applies, the person who has, or each of the persons who together have, the interest in the first company shall be regarded for the purposes of this Chapter as thereby having an interest in the second company.
- (7) In any case where this subsection applies, in construing references in this Chapter to one person having the same interest as another, the person or, as the case may be, each of the persons who together have, the interest in the first company shall be treated as having, to the extent of that person’s interest in that company, the same interest as the first company has in the second company.
- (8) Where two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they shall be treated for the purposes of this Chapter as having the interest in equal shares.]

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### Textual Amendments

**F56** Ss. 749-749B substituted for s. 749 (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 4](#); S.I. 1998/3173, [art. 2](#)

## 750 Territories with a lower level of taxation.

- <sup>M106</sup>(1) Without prejudice to subsection (3) of section 749, a company which, by virtue of subsection (1) or subsection (2) of that section, is to be regarded as resident in a particular territory outside the United Kingdom shall be considered to be subject to a lower level of taxation in that territory if the amount of tax (“the local tax”) which is paid under the law of that territory in respect of the profits of the company which arise in any accounting period is less than one-half of the corresponding United Kingdom tax on those profits.
- (2) For the purposes of this Chapter, the amount of the corresponding United Kingdom tax on the profits arising in an accounting period of a company resident outside the United Kingdom is the amount of corporation tax which, on the assumptions set out in Schedule 24 and subject to subsection (3) below, would be chargeable in respect of the chargeable profits of the company for that accounting period.
- (3) In determining the amount of corporation tax which, in accordance with subsection (2) above, would be chargeable in respect of the chargeable profits of an accounting period of a company resident outside the United Kingdom—
- (a) it shall be assumed for the purposes of Schedule 24—
    - (i) that a direction has been given under section 747(1) in respect of that period; and
    - (ii) that the Board have made any declaration which they could have made under sub-paragraph (3) of paragraph 11 of that Schedule and of which they gave notice as mentioned in that sub-paragraph; and
  - (b) there shall be disregarded so much of any relief from corporation tax in respect of income as would be attributable to the local tax and would fall to be given by virtue of any provision of Part XVIII other than section 810; and
  - (c) there shall be deducted from what would otherwise be the amount of that corporation tax—
    - (i) any amount which (on the assumptions set out in Schedule 24) would fall to be set off against corporation tax by virtue of section 7(2); and
    - (ii) any amount of income tax or corporation tax actually charged in respect of any of those chargeable profits.
- (4) The references in subsection (3)(c) above to an amount falling to be set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the company whether on the making of a claim or otherwise.

### Marginal Citations

**M106** Source—1984 s.85

*Status:* Point in time view as at 25/07/1991. This version of this part contains provisions that are not valid for this point in time.  
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VALID FROM 28/07/2000

**[<sup>F57</sup>750A Deemed lower level of taxation: designer rate tax provisions.**

- (1) Where—
  - (a) in any accounting period a company is to be regarded by virtue of any of subsections (1) to (4) of section 749 as resident in a particular territory outside the United Kingdom, and
  - (b) within the meaning of section 750(1), the local tax in respect of the profits arising to the company in that accounting period is equal to or greater than three-quarters of the corresponding United Kingdom tax on those profits, but
  - (c) that local tax is determined under designer rate tax provisions,the company shall be taken for the purposes of this Chapter to be subject to a lower level of taxation in that territory in that accounting period.
- (2) In subsection (1) above “designer rate tax provisions” means provisions—
  - (a) which appear to the Board to be designed to enable companies to exercise significant control over the amount of tax which they pay; and
  - (b) which are specified in regulations made by the Board.
- (3) Regulations under subsection (2) above—
  - (a) may make different provision for different cases or with respect to different territories; and
  - (b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.
- (4) The first regulations under subsection (2) above may make provision having effect in relation to accounting periods beginning not more than fifteen months before the date on which the regulations are made.]

**Textual Amendments**

**F57** S. 750A inserted (with effect in accordance with Sch. 31 para. 9(2) of the amending Act) by Finance Act 2000 (c. 17), Sch. 31 para. 3

**751 Accounting periods and creditable tax**

- <sup>M107</sup>(1) For the purposes of this Chapter, an accounting period of a company resident outside the United Kingdom shall begin—
- (a) whenever the company comes under the control of [<sup>F58</sup>persons] resident in the United Kingdom;
  - (b) whenever the company, not being the subject of an earlier direction under section 747(1), commences to carry on business; and
  - (c) whenever an accounting period of the company ends without the company then ceasing either to carry on business or to have any source of income whatsoever.
- (2) For the purposes of this Chapter, an accounting period of a company resident outside the United Kingdom shall end if and at the time when—

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- (a) the company ceases to be under the control of persons resident in the United Kingdom; or
  - (b) the company becomes, or ceases to be, liable to tax in a territory; or
  - [<sup>F59</sup>(bb) the company becomes, or ceases to be, a company in relation to which section 749(4A) has effect; or]
  - (c) the company ceases to have any source of income whatsoever;
- and for the purposes of paragraph (b) above “liable to tax” means liable to tax by reason of domicile, residence or place of management.
- (3) Without prejudice to subsections (1) and (2) above, subsections (3), (5) and (7) of section 12 shall apply for the purposes of this Chapter as they apply for the purposes of corporation tax, but with the omission of so much of those provisions as relates to a company coming or ceasing to be within the charge to corporation tax.
- (4) Where it appears to the Board that the beginning or end of any accounting period of a company resident outside the United Kingdom is uncertain, a direction under section 747(1) may specify as an accounting period of the company such period, not exceeding 12 months, as appears to the Board to be appropriate, and that period shall be treated for the purposes of this Chapter as an accounting period of the company unless the direction is subsequently amended under subsection (5) below.
- (5) If, on further facts coming to the knowledge of the Board after the making of a direction (including facts emerging on an appeal against notice of the making of the direction), it appears to the Board that any accounting period specified in the direction is not the true accounting period, the Board shall amend the direction so as to specify the true period.
- (6) In this Chapter, in relation to an accounting period of a controlled foreign company in respect of which a direction is given under section 747(1), the creditable tax means the aggregate of—
- (a) the amount of any relief from corporation tax in respect of income which (on the assumptions set out in Schedule 24 and assuming the company to be liable for corporation tax on the chargeable profits of that accounting period) would fall to be given to the company by virtue of any provision of Part XVIII in respect of foreign tax attributable to any income which is brought into account in determining those chargeable profits; and
  - (b) any amount which (on those assumptions) would fall to be set off against corporation tax on those chargeable profits by virtue of section 7(2); and
  - (c) the amount of any income tax or corporation tax actually charged in respect of the chargeable profits of that accounting period, less any of that tax which has been or falls to be repaid to the company, whether on the making of a claim or otherwise.

#### **Textual Amendments**

**F58** 1990 s.89 and Sch.14 para.9 (*correction of errors*)—*deemed always to have had effect. Previously “the persons”.*

**F59** 1990 s.67(2), (4) *on and after 20 March 1990.*

#### **Marginal Citations**

**M107** Source—1984 s.86

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VALID FROM 19/07/2007

## **751A Reduction in chargeable profits for certain activities of EEA business establishments**

- (1) This section applies if—
  - (a) an apportionment under section 747(3) falls to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,
  - (b) throughout that period the controlled foreign company has a business establishment in an EEA territory,
  - (c) throughout that period there are individuals who work for the controlled foreign company in that territory, and
  - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in that period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period to be reduced by an amount (“the specified amount”) specified in the application (including to nil).
- (3) If the Commissioners grant the application—
  - (a) those chargeable profits are treated as reduced by the specified amount, and
  - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in those chargeable profits,for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
- (4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the amount (if any) equal to so much of those chargeable profits as can reasonably be regarded as representing the net economic value which—
  - (a) arises to the appropriate body of persons (taken as a whole), and
  - (b) is created directly by qualifying work.
- (5) For the purposes of subsection (4) “net economic value” does not include any value which derives directly or indirectly from the reduction or elimination of any liability of any person to any tax or duty imposed under the law of any territory.
- (6) For the purposes of subsection (4) “the appropriate body of persons” means—
  - (a) if the controlled foreign company is not a member of a group of companies, the controlled foreign company and the persons who have an interest in it at any time in the relevant accounting period, and
  - (b) if the controlled foreign company is a member of a group of companies, all the persons falling within paragraph (a) and any other person who is a member of that group of companies,and for the purposes of this subsection “group of companies” means a company and any other companies of which it has control.

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- (7) For the purposes of subsection (4) “qualifying work” means work which—
- (a) is done in any EEA territory in which the controlled foreign company has a business establishment throughout the relevant accounting period, and
  - (b) is done in that territory by individuals working for the controlled foreign company there.
- (8) Any reference in this section to a business establishment of a controlled foreign company in an EEA territory is to be construed in accordance with paragraph 7 of Schedule 25 (but as if the reference in that paragraph to the territory in which the company is resident were to the EEA territory).
- (9) For the purposes of this section individuals are not to be regarded as working for a company in any territory unless—
- (a) they are employed by the company in the territory, or
  - (b) they are otherwise directed by the company to perform duties on its behalf in the territory.

VALID FROM 21/07/2009

#### **[<sup>F60</sup>751A] Reduction in chargeable profits for certain financing income**

- (1) This section applies if—
- (a) an apportionment under section 747(3) falls to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,
  - (b) the chargeable profits of the controlled foreign company for the relevant accounting period would, apart from this section, include an amount of income in respect of a payment made by another company (“the payer”),
  - (c) the amount that the payer brings into account for the purposes of corporation tax in respect of the payment is reduced (in part or in full) by virtue of Part 3 of Schedule 15 to FA 2009 (tax treatment of financing costs and income), and
  - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in the relevant accounting period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period (“the chargeable profits”) to be reduced by an amount (“the specified amount”) specified in the application (including to nil).
- (3) If the Commissioners grant the application—
- (a) the chargeable profits are treated as reduced by the specified amount, and
  - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,
- for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

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- (4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the relevant amount.
- (5) In subsection (4) “the relevant amount” means the amount (if any) by which it is just and reasonable that the chargeable profits should be treated as reduced, having regard to the effect of Parts 3 and 4 of Schedule 15 to FA 2009 on amounts brought into account for the purposes of corporation tax by the payer, or any other company.]

#### Textual Amendments

**F60** S. 751AA inserted (with effect in accordance with Sch. 16 para. 25 of the amending Act) by Finance Act 2009 (c. 10), Sch. 16 para. 23

VALID FROM 19/07/2011

#### [<sup>F61</sup>751A Reduction in chargeable profits: failure to qualify for exemptions

- (1) This section applies if—
  - (a) an apportionment under section 747(3) would fall to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,
  - (b) but for a relevant failure, section 748(1)(ba) or (bb) would have prevented such an apportionment, and
  - (c) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in that period.
- (2) “Relevant failure” means—
  - (a) in the case of section 748(1)(ba), one or both of the following—
    - (i) a failure to satisfy the requirement of paragraph 12E of Schedule 25 (requirement as to company's UK connection) in circumstances where the requirement would be satisfied if the reference in subparagraph (3)(a) of that paragraph to 10% were a reference to 50%, and
    - (ii) a failure to satisfy the requirement of paragraph 12F of that Schedule (finance income and relevant IP income) in circumstances where the relevant IP income of the controlled foreign company for the accounting period does not exceed 5% of the company's gross income for that period, and
  - (b) in the case of section 748(1)(bb), a failure to satisfy the requirement of paragraph 12M of that Schedule (finance income).
- (3) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period (“the chargeable profits”) to be reduced to an amount specified in the application (“the specified amount”).

The specified amount may be nil.

- (4) If the Commissioners grant the application—
  - (a) the chargeable profits are treated as reduced to the specified amount, and



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- (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,
- for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
- (5) The Commissioners may grant the application only if—
- (a) they are satisfied that the specified amount is not less than the relevant amount, and
  - (b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AC.
- (6) “The relevant amount” means—
- (a) if the relevant failure is within subsection (2)(a), the sum of—
    - (i) the excess finance and IP income (if any) for the relevant accounting period, and
    - (ii) in a case where there is a failure specified in subsection (2)(a)(i), so much (if any) of the net chargeable profits for that period as are not excluded by subsection (8), and
  - (b) if the relevant failure is within subsection (2)(b)—
    - (i) the amount (if any) by which the controlled foreign company's finance income for the relevant accounting period exceeds 5% of its gross income for that period, or
    - (ii) if that amount is a negligible amount, nil.
- (7) “The excess finance and IP income” for the relevant accounting period means—
- (a) the amount (if any) by which the total of the controlled foreign company's finance income and relevant IP income for that period exceeds 5% of its gross income for that period, or
  - (b) if that amount is a negligible amount, nil.
- (8) Net chargeable profits are excluded by this subsection if, and to the extent that, they can reasonably be regarded—
- (a) as representing the net economic value which—
    - (i) arises to the appropriate body of persons (taken as a whole), and
    - (ii) is created directly by qualifying work, or
  - (b) as not being wholly or partly attributable, directly or indirectly, to transactions with persons within the charge to United Kingdom tax.
- (9) In subsection (8)(a) “qualifying work” means work which—
- (a) is done in the territory in which the controlled foreign company is resident, and
  - (b) is done in that territory by individuals working for the controlled foreign company there.
- (10) A transaction with a company which is within the charge to United Kingdom tax only because it carries on a trade in the United Kingdom through a permanent establishment there is within subsection (8)(b) only if the transaction is attributable to activities carried on through that establishment.



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- (11) For the purposes of subsections (8) and (9)—
- (a) section 751A(5), (6) and (9) applies as it applies for the purposes of the equivalent provisions of section 751A, and
  - (b) paragraph 5(2) to (5) of Schedule 25 (residence of controlled foreign company) applies as it applies in relation to Part 2 of that Schedule.
- (12) In this section—
- “finance income” has the meaning given by paragraph 12F(3) of Schedule 25 (with references to C read as references to the controlled foreign company);
  - “relevant IP income” has the meaning given by paragraph 12F(4) of that Schedule;
  - “net chargeable profits” means chargeable profits excluding so much of those profits as is directly attributable to the finance income or relevant IP income of the controlled foreign company;
  - “UK-connected gross income” has the same meaning as in paragraph 12E of Schedule 25;
  - “United Kingdom tax” means corporation tax or income tax;
- and paragraph 12G of that Schedule (gross income) applies for the purposes of this section as it applies for the purposes of Part 2A of that Schedule (with references to C read as references to the controlled foreign company).]

#### Textual Amendments

- F61** S. 751AB inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), Sch. 12 para. 2

VALID FROM 19/07/2011

#### **[<sup>F62</sup>751A] Reduction in chargeable profits following an exempt period**

- (1) This section applies if—
- (a) an exempt period in relation to a controlled foreign company ends in accordance with paragraph 15F(2) of Schedule 25 (time exempt period ends if there is an early termination event), other than by reason of an early termination event within paragraph 15F(3)(b),
  - (b) an accounting period (“the relevant accounting period”) of the company ends after that exempt period but before the time the exempt period would have ended had paragraph 15F(2) of that Schedule not applied,
  - (c) an apportionment under section 747(3) would fall to be made as regards the relevant accounting period, and
  - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in that period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for that accounting period (“the chargeable profits”) to be reduced to an amount (“the specified amount”) specified in the application (which may be nil).

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- (3) If the Commissioners grant the application—
- (a) the chargeable profits are treated as reduced to the specified amount, and
  - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,
- for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
- (4) The Commissioners may grant the application only if—
- (a) they are satisfied that the specified amount is not less than the relevant amount, and
  - (b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AB.
- (5) “The relevant amount” means the amount (if any) equal to so much of the chargeable profits as it is just and reasonable to regard as referable to—
- (a) the relevant transaction which triggered the end of the exempt period, or
  - (b) any later relevant transaction occurring before the time the exempt period would have ended had paragraph 15F(2) of Schedule 25 not applied.
- (6) “Relevant transaction” has the meaning given by paragraph 15E of Schedule 25 (and it does not matter if the transaction occurs pursuant to an agreement entered into by the controlled foreign company before the relevant time (within the meaning of paragraph 15G of that Schedule)).]

#### Textual Amendments

**F62** S. 751AC inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), Sch. 12 para. 7

VALID FROM 19/07/2007

#### **751B Section 751A: supplementary**

- (1) An application by a company under section 751A—
- (a) must be made in such form as the HMRC Commissioners may determine,
  - (b) must be accompanied by such documents (or copies of documents) in the company's possession or power as those Commissioners may reasonably require for the purpose of determining whether to grant the application, and
  - (c) must contain such information as those Commissioners may reasonably require for that purpose.
- (2) An application by a company under section 751A—
- (a) may be made at any time on or before the filing date (within the meaning of Schedule 18 to the Finance Act 1998) for the relevant company tax return of the company, and

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- (b) may be amended or withdrawn at any time before the application is determined by those Commissioners.
- (3) If an application by a company under section 751A is granted after the company has delivered its relevant company tax return, it has 30 days beginning with the day on which the application is granted in which to amend that return to give effect to section 751A.
- (4) The time limits otherwise applicable to an amendment of a company tax return do not prevent an amendment being made under subsection (3).
- (5) If the HMRC Commissioners refuse an application by a company under section 751A, the company may appeal to the Special Commissioners against the refusal.
- (6) Notice of an appeal must be given in writing to the HMRC Commissioners within 30 days after the application is refused.
- (7) On an appeal—
  - (a) if the Special Commissioners are satisfied that the relevant amount is a different amount from the amount specified in the application, they must direct the HMRC Commissioners to grant the application as if the amount specified in it were that different amount,
  - (b) if the Special Commissioners are satisfied that the relevant amount is the amount specified in the application, they must direct the HMRC Commissioners to grant the application, and
  - (c) in any other case, the Special Commissioners must confirm the refusal.
- (8) For the purposes of subsection (7) “the relevant amount” means the amount (if any) equal to so much of the chargeable profits mentioned in subsection (4) of section 751A as can reasonably be regarded as representing the value mentioned in that subsection.
- (9) Part 5 of the Management Act (appeals against assessments to tax), apart from section 50, applies in relation to an appeal under this section as it applies in relation to an appeal against an assessment to tax.
- (10) In this section “relevant company tax return”, in relation to a company, means the return for the accounting period for which—
  - (a) any sum is chargeable on the company under section 747(4)(a), or
  - (b) any sum would be so chargeable but for section 751A,in respect of the chargeable profits of the controlled foreign company for the accounting period mentioned in section 751A(1).
- (11) In this section “the HMRC Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

## 752 Apportionment of chargeable profits and creditable tax

- <sup>M108</sup>(1) Where a direction has been given under section 747(1) in respect of an accounting period of a controlled foreign company, then, subject to subsections (2) and (3) below, the apportionment of the company's chargeable profits and creditable tax (if any) for that period shall be made among, and according to the respective interests of, the persons who at any time during that period had interests in the company.

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- (2) In determining for the purposes of this Chapter the respective interests of persons who (in accordance with section 749) have interests in a controlled foreign company, the Board may, if it seems to them just and reasonable to do so, attribute to each of those persons an interest corresponding to his interest in the assets of the company available for distribution among those persons in the event of a winding up or in any other circumstances.
- (3) Where the controlled foreign company is not a trading company, the Board may, if it seems to them just and reasonable to do so, treat a loan creditor as having for the purposes of this section an interest in the company to the extent to which the income of the company has been, or is available to be, expended in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor.
- (4) Subject to subsections (5) and (7) below, as between persons each of whom has an unvarying holding of shares of the same class throughout a particular accounting period of a controlled foreign company, the amount of the company's chargeable profits and creditable tax which is apportioned to each of them by virtue of his holding of those shares shall be in direct proportion to the numbers of shares comprised in their holdings; and similar principles shall apply in relation to an apportionment among other persons each of whom holds an interest of the same description in the controlled foreign company.
- (5) Where the same interest in a controlled foreign company is held directly by one person and indirectly by another or others (as in a case where one company has a shareholding in the controlled foreign company and the first company is controlled by a third company or by two or more persons together) then, subject to subsection (6) below, the Board, in apportioning the company's chargeable profits and creditable tax—
  - (a) may treat that interest as held solely by a person who holds that interest indirectly or, as the case may be, by two or more persons (the "holders") who, taken together, hold that interest indirectly, and
  - (b) in particular, if that person or one or more of those holders is resident in the United Kingdom, may treat the interest as held solely by that one or, as the case may be, those holders.
- (6) In any case where the same interest is held directly by one person and indirectly by another and the circumstances are as set out in any of paragraphs (a) to (c) below, the Board shall treat the interest as held solely by the company which is described in the paragraph concerned as "the assessable company"—
  - (a) where the interest is held directly by a company resident in the United Kingdom, that company is the assessable company; and
  - (b) where the interest is held directly by a person resident outside the United Kingdom and indirectly by only one company resident in the United Kingdom, that company is the assessable company; and
  - (c) where the interest is held directly by a person resident outside the United Kingdom and indirectly by two or more companies resident in the United Kingdom, the assessable company is that one of the companies which so holds the interest by virtue of holding directly an interest in a foreign holding company;

and for the purposes of paragraph (c) above a foreign holding company is a company resident outside the United Kingdom which holds directly or indirectly the interest in the controlled foreign company.

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- (7) Without prejudice to subsection (5) above, in any case where an interest in a controlled foreign company is held in a fiduciary or representative capacity in such circumstances that there is or are an identifiable beneficiary or beneficiaries, the Board may treat the interest as held by that beneficiary or, as the case may be, as apportioned among those beneficiaries; and any such apportionment shall be made on such basis as seems to the Board to be just and reasonable.
- (8) Subject to the preceding provisions of this section, the apportionment of the chargeable profits and creditable tax of a controlled foreign company for any accounting period shall be made on such basis as seems to the Board to be just and reasonable.

#### Marginal Citations

M108 Source—1984 s.87

VALID FROM 31/07/1998

#### <sup>F63</sup>752A Relevant interests.

- (1) This section has effect for the purpose of determining for the purposes of this Chapter who has a relevant interest in a controlled foreign company at any time; and references in this Chapter to relevant interests shall be construed accordingly.
- (2) A UK resident company which has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (3) below otherwise provides.
- (3) A UK resident company which has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if it has the interest by virtue of having a direct or indirect interest in another UK resident company.
- (4) A related person who has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (5) or (6) below otherwise provides.
- (5) A related person who has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if he has the interest by virtue of having a direct or indirect interest in—
  - (a) a UK resident company; or
  - (b) another related person.
- (6) A related person who has a direct or indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest to the extent that a UK resident company—
  - (a) has the whole or any part of the same interest indirectly, by virtue of having a direct or indirect interest in the related person, and
  - (b) by virtue of that indirect interest in the controlled foreign company, has a relevant interest in the company by virtue of subsection (2) above.
- (7) A person who—
  - (a) has a direct interest in a controlled foreign company, but

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- (b) does not by virtue of subsections (2) to (6) above have a relevant interest in the company by virtue of that interest,  
 has a relevant interest in the company by virtue of that interest unless subsection (8) below otherwise provides.
- (8) A person does not by virtue of subsection (7) above have a relevant interest in a controlled foreign company by virtue of having a direct interest in the company to the extent that another person—
- (a) has the whole or any part of the same interest indirectly, and
  - (b) by virtue of that indirect interest, has a relevant interest in the company by virtue of subsections (2) to (6) above.
- (9) No person has a relevant interest in a controlled foreign company otherwise than as provided by subsections (2) to (8) above.
- (10) In this section—
- “related person” means a person who—
- (a) is not a UK resident company, but
  - (b) is connected or associated with a UK resident company which has by virtue of subsection (2) above a relevant interest in the controlled foreign company in question;
- “UK resident company” means a company resident in the United Kingdom.]

#### Textual Amendments

**F63** Ss. 752-752C substituted for s. 752 (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 7](#); S.I. 1998/3173, [art. 2](#)

VALID FROM 31/07/1998

#### <sup>F63</sup>Section 752(3): the percentage of shares which a relevant interest represents.

- (1) For the purposes of section 752(3) above, where a person has a relevant interest in a controlled foreign company by virtue of indirectly holding issued ordinary shares of the company, the percentage of the issued ordinary shares of the company which the relevant interest represents is equal to—

$$P \times S$$

where—

P is the product of the appropriate fractions of that person and each of the share-linked companies through which he indirectly holds the shares in question, other than the lowest share-linked company; and

S is the percentage of issued ordinary shares of the controlled foreign company which is held directly by the lowest share-linked company.

- (2) In subsection (1) above and this subsection—

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“the appropriate fraction”, in the case of a person who directly holds ordinary shares of a share-linked company, means that fraction of the issued ordinary shares of that company which his holding represents;

“the lowest share-linked company”, in relation to a person who indirectly holds ordinary shares of a controlled foreign company, means the share-linked company which directly holds the shares in question;

“share-linked company” means a company which is share-linked to the controlled foreign company in question.

(3) Where a person has different indirect holdings of shares of the controlled foreign company (as in a case where different shares are held through different companies which are share-linked to the controlled foreign company)—

(a) subsection (1) above shall apply separately in relation to the different holdings with any necessary modifications; and

(b) for the purposes of section 752(3) above the percentage of the issued ordinary shares of the company which the relevant interest represents is the aggregate of the percentages resulting from those separate applications.

(4) Where, for the purposes of subsection (3) of section 752, the percentage of the issued ordinary shares of the controlled foreign company which a person directly or indirectly holds varies during the relevant accounting period, he shall be treated for the purposes of that subsection as holding throughout that period that percentage of the issued ordinary shares of the company which is equal to the sum of the relevant percentages for each holding period in the relevant accounting period.

(5) For the purposes of subsection (4) above—

“holding period”, in the case of any person, means a part of the relevant accounting period during which the percentage of the issued ordinary shares of the controlled foreign company which the person holds (whether directly or indirectly) remains the same;

“the relevant percentage”, in the case of a holding period, means the percentage equal to—

$$\frac{P \times H}{A}$$

where—

P is the percentage of the issued ordinary shares of the controlled foreign company which the person in question directly or indirectly holds in the holding period, as calculated in accordance with subsections (1) to (3) above so far as applicable;

H is the number of days in the holding period; and

A is the number of days in the relevant accounting period.]

### Textual Amendments

**F63** Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 7; S.I. 1998/3173, art. 2



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VALID FROM 31/07/1998

### **[<sup>F63</sup>752C Interpretation of apportionment provisions.**

- (1) In this section “the relevant provisions” means sections 752 to 752B and this section.
- (2) For the purposes of the relevant provisions—
  - (a) a person has a direct interest in a company if (and only if) he has an interest in the company otherwise than by virtue of having an interest in another company;
  - (b) a person has an indirect interest in a company if (and only if) he has an interest in the company by virtue of having an interest in another company;
  - (c) a person indirectly holds shares of a controlled foreign company if (and only if) he directly holds ordinary shares of a company which is share-linked to the controlled foreign company.
- (3) For the purposes of the relevant provisions, a company is “share-linked” to a controlled foreign company if it has an interest in the controlled foreign company only by virtue of directly holding ordinary shares—
  - (a) of the controlled foreign company, or
  - (b) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) above, or
  - (c) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) or (b) above,
 and so on.
- (4) For the purposes of the relevant provisions, a company (“company A”) has an intermediate interest in a controlled foreign company if (and only if)—
  - (a) it has a direct or indirect interest in the controlled foreign company; and
  - (b) one or more other persons have relevant interests in the controlled foreign company by virtue of having a direct or indirect interest in company A.
- (5) Any interest or shares held by a nominee or bare trustee shall be treated for the purposes of the relevant provisions as held by the person or persons for whom the nominee or bare trustee holds the interest or shares.
- (6) Where—
  - (a) an interest in a controlled foreign company is held in a fiduciary or representative capacity, and
  - (b) subsection (5) above does not apply, but
  - (c) there are one or more identifiable beneficiaries,
 the interest shall be treated for the purposes of the relevant provisions as held by that beneficiary or, as the case may be, as apportioned on a just and reasonable basis among those beneficiaries.
- (7) In the relevant provisions—
 

“bare trustee” means a person acting as trustee—

  - (a) for a person absolutely entitled as against the trustee; or



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- (b) for any person who would be so entitled but for being a minor or otherwise under a disability; or
  - (c) for two or more persons who are or would, but for all or any of them being a minor or otherwise under a disability, be jointly so entitled;
- “ordinary shares”, in the case of any company, means shares of a single class, however described, which is the only class of shares issued by the company;
- “the relevant accounting period” means the accounting period mentioned in section 752(1);
- “share” includes a reference to a fraction of a share.]

#### Textual Amendments

**F63** Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 7; S.I. 1998/3173, art. 2

### 753 Notices and appeals.

<sup>M109</sup>(1) Where the Board have given a direction under section 747(1) with respect to an accounting period of a controlled foreign company, notice of the making of the direction shall be given to every company resident in the United Kingdom which appears to the Board to have had an interest in the controlled foreign company at any time during that period.

(2) A notice under subsection (1) above shall—

- (a) specify the date on which the direction was made and the controlled foreign company to which it relates;
- (b) specify the accounting period to which the direction relates and the amount of the chargeable profits and creditable tax computed for that period;
- (c) specify the reliefs (if any) which it has been assumed that the company has claimed by virtue of paragraph 4(1) of Schedule 24;
- (d) specify, in a case where paragraph (d) of subsection (2) of section 749 applies, the territory which, by virtue of that paragraph, was specified in the direction and, in any other case, specify the territory (if any) in which, by virtue of that section, the Board consider that the company is to be regarded as resident for the purposes of this Chapter;
- (e) inform the recipient of the notice of the right of appeal conferred on him by subsection (4) below and of the right to give notice under paragraph 4(2) of Schedule 24; and
- (f) specify any declaration with respect to the accounting period concerned which was made prior to or at the same time as the notice by virtue of paragraph 11(3) of Schedule 24 or paragraph 3(2) of Schedule 25;

and, in the case of a notice given after the direction concerned has been amended by virtue of section 751(5), the notice shall specify the date of the amendment and (so far as paragraphs (b) and (c) above are concerned) shall relate to the position resulting from the amendment.

(3) Where, by virtue of section 751(5), the Board have amended a direction so as to specify a revised accounting period, notice of the making of the amendment shall be given to

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every company which was previously given notice of the making of the direction; and a notice under this subsection—

- (a) shall identify the direction which is amended and state the effect of the amendment, including the extent to which the matters specified in the notice of the making of the direction are superseded; and
  - (b) shall contain the provisions required, by virtue of paragraphs (b) to (f) of subsection (2) above, to be included in a notice under subsection (1) above.
- (4) Any company to which notice is given under subsection (1) or subsection (3) above may, by giving notice of appeal to the Board within 60 days of the date of the notice given to the company, appeal to the Special Commissioners against that notice on all or any of the following grounds—
- (a) that the direction should not have been given or, where the direction has been amended, that the amendment should not have been made;
  - (b) that the amount of chargeable profits or creditable tax specified in the notice is incorrect;
  - (c) that the company did not have an interest in the controlled foreign company concerned at any time during the accounting period in question;
  - (d) that, if the notice specifies a declaration made by virtue of sub-paragraph (3) of paragraph 11 of Schedule 24, the condition for the making of that declaration in sub-paragraph (5) of that paragraph was not fulfilled; and
  - (e) that, if the notice specifies a declaration made by virtue of paragraph 3(2) of Schedule 25, the condition for the making of that declaration was not fulfilled;
- and the notice of appeal shall specify the grounds of appeal, but on the hearing of the appeal the Special Commissioners may allow the appellant to put forward any ground not specified in the notice and take it into consideration if satisfied that the omission was not wilful or unreasonable.
- (5) If, after the time at which notice is given under subsection (1) above with respect to an accounting period of a controlled foreign company, the Board make a declaration by virtue of—
- (a) paragraph 11(3) of Schedule 24; or
  - (b) paragraph 3(2) of Schedule 25,

then, unless the effect of the declaration is such that a notice (which, among other matters, will specify the declaration) will be required to be given under subsection (3) above, the Board shall give notice specifying the declaration to every company which was previously given notice of the making of the direction; and subsection (4) above shall apply in relation to a notice under this subsection as it applies in relation to a notice under subsection (3) above but with the omission of paragraphs (a) to (c).

- (6) If it appears to the inspector that the amount of the chargeable profits or creditable tax specified in a notice under subsection (1) or subsection (3) above is incorrect, he shall give notice of the revised amount to every company to which notice was given under subsection (1) or subsection (3) above and, except where the revised amount results from—
- (a) an appeal under this section, or
  - (b) a notice given to the Board under paragraph 4(2) of Schedule 24 or by virtue of paragraph 12 of that Schedule,

any company to which notice is given under this subsection may, by giving notice of appeal to the Board within 60 days of the date of the notice given to the company,

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appeal to the Special Commissioners against the revised amount specified in the notice.

- (7) The jurisdiction of the Special Commissioners on an appeal under this section shall include jurisdiction to review any decision of the Board or the inspector which is relevant to a ground of the appeal.
- (8) The Board may make regulations—
- (a) as respects the conduct of appeals under this section;
  - (b) entitling any person who has received, or is connected or associated with a person who has received, a notice under subsection (1) above with respect to a particular accounting period of a controlled foreign company to appear on an appeal brought by another person who has received such a notice; and
  - (c) with respect to the joinder of appeals brought by different persons with respect to the same direction or the same amount of chargeable profits or creditable tax.

**Marginal Citations**

M109 Source—1984 s.88

**754 Assessment, recovery and postponement of tax.**

- <sup>M110</sup>(1) Subject to the following provisions of this section, the provisions of section 747(4)(a) relating to assessment and recovery of a sum as if it were an amount of corporation tax shall be taken as applying, subject to the provisions of the Taxes Acts, and to any necessary modifications, all enactments applying generally to corporation tax, including those relating to the assessing, collecting and receiving of corporation tax, those conferring or regulating a right of appeal and those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.
- (2) For the purposes of the Taxes Acts, any sum assessable and recoverable under section 747(4)(a) shall be regarded as corporation tax which falls to be assessed for the accounting period in which ends that one of the controlled foreign company's accounting periods the chargeable profits of which give rise to that sum; and a notice of assessment relating to such a sum shall (in addition to any other matter required to be contained in such a notice) specify separately—
- (a) the total amount of those chargeable profits and of any creditable tax which has been apportioned to persons falling within each of paragraphs (a) to (d) of subsection (5), or within subsection (7), of section 749, and
  - (b) where there is more than one class of shares in the controlled foreign company, the total amount apportioned to persons holding shares of each class,
- but such a notice shall not identify any particular person (other than the person assessed) as having an interest of any description in the controlled foreign company.
- (3) On an appeal against an assessment to tax under section 747(4)(a), the jurisdiction of the Special Commissioners shall include jurisdiction to review any relevant decision taken by the Board under section 752 in connection with the apportionment of chargeable profits or creditable tax.

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- (4) No appeal may be brought against an assessment to tax under section 747(4)(a) on a ground on which an appeal has or could have been brought under section 753(4) or (6).
- (5) Schedule 26 shall have effect with respect to the reliefs which may be claimed by a company resident in the United Kingdom which has a liability for tax in respect of an amount of chargeable profits; and no reliefs other than those provided for by that Schedule shall be allowed against any such liability.
- (6) In any case where—
- (a) the whole or any part of the tax assessed on a company (“the assessable company”) by virtue of section 752(6) is not paid before the date on which it is due and payable in accordance with this Act or, as the case may be, the Management Act; and
  - (b) the Board serve a notice of liability to tax under this subsection on another company (“the responsible company”) which is resident in the United Kingdom and holds or has held (whether directly or indirectly) the same interest in the controlled foreign company as is or was held by the assessable company,
- the tax assessed on the assessable company or, as the case may be, so much of it as remains unpaid shall be payable by the responsible company upon service of the notice.
- (7) Where a notice of liability is served under subsection (6) above—
- (a) any interest due on the tax assessed on the assessable company and not paid; and
  - (b) any interest accruing due on that tax after the date of service,
- shall be payable by the responsible company.
- (8) In any case where—
- (a) a notice of liability is served on the responsible company under subsection (6) above, and
  - (b) the relevant tax and any interest payable by the responsible company under subsection (7) above is not paid by that company before the expiry of the period of three months beginning on the date of service of the notice,
- that tax and interest may, without prejudice to the right of recovery from the responsible company, be recovered from the assessable company.
- (9) In this section “the Taxes Acts” has the same meaning as in the Management Act.

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

**C58** See 1970(M) s.55(1)(g) and (6A).

**Marginal Citations**

**M110** Source—1984 s.89(1)-(4), (7)-(11)

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VALID FROM 31/07/1998

**[<sup>F64</sup>754A] Returns where it is not established whether acceptable distribution policy applies.**

- (1) This section applies where—
  - (a) a company resident in the United Kingdom (“the UK company”) has an interest in a controlled foreign company at any time during an accounting period of the controlled foreign company;
  - (b) the UK company delivers a company tax return; and
  - (c) at the time when the UK company delivers the company tax return, it is not established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period.
- (2) If the UK company is of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company pursues such a policy.
- (3) If the UK company is not of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company does not pursue such a policy.
- (4) In any case where—
  - (a) the UK company acts in pursuance of subsection (2) above, but
  - (b) it becomes established that the controlled foreign company has not pursued an acceptable distribution policy in relation to the accounting period,the UK company shall amend the company tax return on the basis that the accounting period is not one in relation to which the controlled foreign company pursues an acceptable distribution policy.
- (5) In any case where—
  - (a) the UK company acts in pursuance of subsection (3) above, but
  - (b) it becomes established that the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period,the UK company shall amend the company tax return on the basis that the accounting period is one in relation to which the controlled foreign company pursues an acceptable distribution policy.
- (6) Any amendment required to be made to the company tax return by virtue of subsection (4) or (5) above (“an ADP amendment”) shall be made by the UK company before the expiration of the period of 30 days next following the end of the period allowed for establishing an ADP in relation to the accounting period of the controlled foreign company.
- (7) Subject to subsection (8) below, the making of any ADP amendment is subject to, and must be in accordance with, the other provisions of the Corporation Tax Acts as they apply for the purposes of this Chapter.

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- (8) The time limits otherwise applicable to amendment of a company tax return do not apply to an ADP amendment.
- (9) A company which fails to make an ADP amendment required by subsection (4) above within the time allowed for doing so shall be liable to a tax-related penalty under paragraph 20 of Schedule 18 to the Finance Act 1998 (penalty, not exceeding amount of tax understated, for incorrect or uncorrected return).
- (10) For the purposes of this section, if it has not previously been established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period, it shall be taken to be established immediately after the end of the period allowed for establishing an ADP in relation to that accounting period.
- (11) In this section, “the period allowed for establishing an ADP” means, in relation to an accounting period of a controlled foreign company, the period ending with the expiration of—
  - (a) subject to paragraph (b) below, the period of eighteen months next following the end of the accounting period; or
  - (b) if the Board have, in the case of the accounting period, allowed further time under paragraph 2(1)(b) of Schedule 25, the further time so allowed.
- (12) In this section any reference to a controlled foreign company pursuing an acceptable distribution policy in relation to an accounting period shall be construed in accordance with Part I of Schedule 25.]

#### Textual Amendments

**F64** S. 754A inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 10; S.I. 1998/3173, art. 2

VALID FROM 31/07/1998

#### <sup>F65</sup>754B Determinations requiring the sanction of the Board.

- (1) This section has effect where a determination requiring the Board’s sanction is made for any of the following purposes, that is to say—
  - (a) the giving of a closure notice; or
  - (b) the making of a discovery assessment.
- (2) If the closure notice or, as the case may be, notice of the discovery assessment is given to any person without—
  - (a) the determination, so far as it is taken into account in the closure notice or the discovery assessment, having been approved by the Board, or
  - (b) notification of the Board’s approval having been served on that person at or before the time of the giving of the notice,
 the closure notice or, as the case may be, the discovery assessment shall be deemed to have been given or made (and in the case of an assessment notified) in the terms (if any) in which it would have been given or made had that determination not been taken into account.

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- (3) A notification under subsection (2)(b) above—
- (a) must be in writing;
  - (b) must state that the Board have given their approval on the basis that—
    - (i) an amount of chargeable profits, and
    - (ii) an amount of creditable tax (which may be nil),for the accounting period of the controlled foreign company in question fall to be apportioned under section 747(3) to the person in question;
  - (c) must state the amounts mentioned in sub-paragraphs (i) and (ii) of paragraph (b) above; and
  - (d) subject to paragraphs (a) to (c) above, may be in such form as the Board may determine.
- (4) For the purposes of this section, the Board’s approval of a determination requiring their sanction—
- (a) must be given specifically in relation to the case in question and must apply to the amount determined; but
  - (b) subject to that, may be given by the Board (either before or after the making of the determination) in any such form or manner as they may determine.
- (5) In this section references to a determination requiring the Board’s sanction are references (subject to subsection (6) below) to any determination of the amount of chargeable profits or creditable tax for an accounting period of a controlled foreign company which falls to be apportioned to a particular person under section 747(3).
- (6) For the purposes of this section, a determination shall be taken, in relation to a closure notice or a discovery assessment, not to be a determination requiring the Board’s sanction if—
- (a) an agreement about the relevant amounts has been made between an officer of the Board and the person in whose case it is made;
  - (b) that agreement is in force at the time of the giving of the closure notice or, as the case may be, notice of the assessment; and
  - (c) the matters to which the agreement relates include the amount determined.
- (7) In paragraph (a) of subsection (6) above, “the relevant amounts” means—
- (a) the amount of chargeable profits, and
  - (b) the amount of creditable tax (which may be nil),
- for the accounting period of the controlled foreign company in question which fall to be apportioned under section 747(3) to the person mentioned in that paragraph.
- (8) For the purposes of subsection (6) above an agreement made between an officer of the Board and any person (“the taxpayer”) in relation to any matter shall be taken to be in force at any time if, and only if—
- (a) the agreement is one which has been made or confirmed in writing;
  - (b) that time is after the end of the period of thirty days beginning—
    - (i) in the case of an agreement made in writing, with the day of the making of the agreement, and
    - (ii) in any other case, with the day of the agreement’s confirmation in writing; and



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- (c) the taxpayer has not, before the end of that period of thirty days, served a notice on an officer of the Board stating that he is repudiating or resiling from the agreement.
- (9) The references in subsection (8) above to the confirmation in writing of an agreement are references to the service on the taxpayer by an officer of the Board of a notice—
- (a) stating that the agreement has been made; and
  - (b) setting out the terms of the agreement.
- (10) The matters that may be questioned on so much of any appeal by virtue of any provision of the Management Act or Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) as relates to a determination the making of which has been approved by the Board for the purposes of this section shall not include the Board’s approval, except to the extent that the grounds for questioning the approval are the same as the grounds for questioning the determination itself.
- (11) In this section—
- “closure notice” means a notice under paragraph 32 of Schedule 18 to the Finance Act 1998 (completion of enquiry and statement of conclusions);
- “discovery assessment” means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule).]

#### Textual Amendments

**F65** S. 754B inserted (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 11](#); S.I. 1998/3173, [art. 2](#)

### 755 Information relating to controlled foreign companies

- <sup>MIII</sup>(1) Where it appears to the Board that a company resident outside the United Kingdom (in this section referred to as a “foreign subsidiary”) may be a controlled foreign company, the Board may, by notice given to any company which appears to them to be a controlling company of the foreign subsidiary, require that company to give to the Board, within such time (not being less than 30 days) as may be specified in the notice, such particulars (which may include details of documents) as may be so specified with respect to any matter concerning the foreign subsidiary, being particulars required by the Board for the purposes of this Chapter as being relevant to the affairs of the controlling company, the foreign subsidiary or any connected or associated company.
- (2) In this section “controlling company”, in relation to a foreign subsidiary or any other company, means a company which is resident in the United Kingdom and has, alone or together with other persons so resident, control of the foreign subsidiary or, as the case may be, that other company.
- (3) The Board may by notice given to a company which appears to them to be a controlling company in relation to a foreign subsidiary require that company to make available for inspection any relevant books, accounts, or other documents or records whatsoever of the company itself or, subject to subsection (6) below, of any other company, including the foreign subsidiary, in relation to which it appears to the Board to be a controlling company.



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- (4) In subsection (3) above “relevant” means relevant to—
- (a) the computation of any profits of the foreign subsidiary; or
  - (b) the question whether a direction should be given under section 747(1) with respect to the foreign subsidiary or a connected or associated company or whether any such direction should be amended; or
  - (c) any question as to the amount of the chargeable profits or creditable tax for any accounting period of the foreign subsidiary or a connected or associated company; or
  - (d) any question as to the sum which, in accordance with section 747(4)(a), should be assessed on and recoverable from any person.
- (5) In subsections (1) and (4) above “connected or associated company” means a controlled foreign company with which the foreign subsidiary or the controlling company is connected or associated.
- (6) In any case where—
- (a) under subsection (3) above a company is by notice required to make available for inspection any books, accounts, documents or records of a company other than itself, and
  - (b) it appears to the Board, on the application of the company, that the circumstances are such that the requirement ought not to have effect,
- the Board shall direct that the company need not comply with the requirement.
- (7) If, on an application under subsection (6) above, the Board refuse to give a direction under that subsection, the company concerned may, by notice given to the Board within 30 days after the refusal, appeal to the Special Commissioners who, if satisfied that the requirement in question ought in the circumstances not to have effect, may determine accordingly.

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**Marginal Citations**

**M111** Source—1984 s.90(1)-(7)

VALID FROM 31/07/1998

**[<sup>F66</sup>755A Treatment of chargeable profits and creditable tax apportioned to company carrying on life assurance business.**

- (1) This section applies in any case where—
- (a) an amount (“the apportioned profit”) of a controlled foreign company’s chargeable profits for an accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom (“the UK company”);
  - (b) the UK company carries on life assurance business in that one of its accounting periods (“the relevant accounting period”) in which ends the accounting period of the controlled foreign company; and
  - (c) the property or rights which represent the UK company’s relevant interest in the controlled foreign company constitute to any extent assets of the UK company’s long term business fund.

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- (2) Subsections (3) and (4) below apply if, in the case of the relevant accounting period, the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business.
- (3) Where this subsection applies, the “appropriate rate” for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 in relation to the policy holders’ part of any BLAGAB apportioned profit shall be—
- (a) if a single rate of tax under section 88A(1) of the<sup>M112</sup>Finance Act 1989 (lower corporation tax rate on certain insurance company profits) is applicable in relation to the relevant accounting period, that rate; or
  - (b) if more than one such rate of tax is applicable in relation to the relevant accounting period, the average of those rates over the whole of that period.
- (4) Where this subsection applies, the “appropriate rate” for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 shall be nil in relation to so much of the apportioned profit as is referable to—
- (a) pension business,
  - (b) life reinsurance business, or
  - (c) overseas life assurance business,
- carried on by the UK company.
- (5) If, in the case of the relevant accounting period, the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, the “appropriate rate” for the purposes of—
- (a) section 747(4)(a), and
  - (b) paragraph 1 of Schedule 26,
- shall be nil in relation to so much of the apportioned profit as is referable to the UK company’s relevant interest so far as represented by assets of its long term business fund.
- (6) If, in the case of the relevant accounting period,—
- (a) the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business,
  - (b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company, and
  - (c) the apportioned profit is to any extent referable to a category of business specified in paragraphs (a) to (c) of subsection (4) above,
- so much of the creditable tax so apportioned as is attributable to the apportioned profit so far as so referable shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.
- (7) If, in the case of the relevant accounting period,—
- (a) the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, and
  - (b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company,
- so much of the creditable tax so apportioned as is attributable to so much of the apportioned profit as is referable to the UK company’s relevant interest so far as represented by assets of the UK company’s long term business fund shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.

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- (8) Any set off under paragraph 1 or 2 of Schedule 26 against the UK company's liability to tax under section 747(4)(a) in respect of the apportioned profit shall be made against only so much of that liability as is attributable to the eligible part of the apportioned profit.
- (9) Accordingly, in the application of paragraph 2 of Schedule 26 in relation to the apportioned profit, in the definition of "the relevant maximum" in sub-paragraph (3) —
- (a) the reference to the liability to tax referred to in sub-paragraph (1) of that paragraph shall be taken as a reference to only so much of that liability as is attributable to the eligible part of the apportioned profit; and
  - (b) in paragraph (a), for the amount there described there shall be substituted a reference to the eligible part of the apportioned profit.
- (10) For the purposes of this section, the "eligible part" of the apportioned profit is any BLAGAB apportioned profit, other than the policy holders' part.
- (11) For the purposes of this section, the "policy holders' part" of any BLAGAB apportioned profit is—
- (a) in a case where subsection (4) of section 88A of the <sup>M113</sup>Finance Act 1989 applies, the whole; and
  - (b) in any other case, the fraction described in subsection (5)(b) of that section.
- (12) In this section—
- "BLAGAB apportioned profit" means so much of the apportioned profit as is referable to basic life assurance and general annuity business carried on by the UK company;
  - "long term business fund" has the meaning given by section 431(2).
- (13) For the purposes of this section, the part of the apportioned profit which is referable to—
- (a) pension business,
  - (b) life reinsurance business,
  - (c) overseas life assurance business, or
  - (d) basic life assurance and general annuity business,
- carried on by the UK company is the part which would have been so referable under section 432A had the apportioned profit been a dividend paid to the UK company at the end of the accounting period mentioned in subsection (1)(a) above in respect of the property or rights which represent the UK company's relevant interest in the controlled foreign company.
- (14) For the purposes of this section, any attribution of creditable tax to a particular part of the apportioned profit shall be made in the proportion which that part of the apportioned profit bears to the whole of the apportioned profit.]

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#### Textual Amendments

- F66** S. 755A inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 13; S.I. 1998/3173, art. 2

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

- C59** S. 755A modified (6.4.1999) by [The Individual Savings Account \(Insurance Companies\) Regulations 1998 \(S.I. 1998/1871\)](#), **regs. 1, 5, 18**
- C60** S. 755A modified by the [Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/473\)](#), **reg. 30B** (as inserted (13.10.1999) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 1999 \(S.I. 1999/2636\)](#), **regs. 1, 4**)

#### **Marginal Citations**

- M112** 1989 c. 26.  
**M113** 1989 c. 26.

VALID FROM 31/07/1998

#### **[<sup>F67</sup>755B Amendment of return where general insurance business of foreign company accounted for on non-annual basis.**

- (1) This section applies where—
- (a) a controlled foreign company carries on general insurance business in an accounting period;
  - (b) an amount of the company's chargeable profits, and an amount of its creditable tax (if any), for that accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom ("the UK company");
  - (c) the UK company delivers a company tax return for that one of its accounting periods in which the controlled foreign company's accounting period ends; and
  - (d) in making or amending the return, the UK company has regard to accounts of the controlled foreign company drawn up using a method falling within subsection (2) below.
- (2) The methods which fall within this subsection are—
- (a) the method described in paragraph 52 of Schedule 9A to the <sup>M114</sup>Companies Act 1985 (which provides for a technical provision to be made in the accounts which is later replaced by a provision for estimated claims outstanding); and
  - (b) any method which would have fallen within paragraph (a) above, had final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of that Schedule, taken place, and been required to take place, no later than the end of the year referred to in that sub-paragraph as the third year following the underwriting year.
- (3) Where this section applies—
- (a) the UK company may make any amendments of its company tax return arising from the replacement of the technical provision in the controlled foreign company's accounts at any time within twelve months from the date on which the provision was replaced; and
  - (b) notice of intention to enquire into the return under paragraph 24 of Schedule 18 to the Finance Act 1998 may be given at any time up to two years from that date (or at any later time in accordance with the general rule in sub-paragraph (3) of that paragraph).

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- (4) If, in a case where this section applies, the accounts of the controlled foreign company are drawn up using a method falling within paragraph (b) of subsection (2) above—
- (a) the controlled foreign company, and
  - (b) any person with an interest in the controlled foreign company,
- shall be treated for the purposes of this section as if final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of Schedule 9A to the <sup>M115</sup>Companies Act 1985, had taken place at, and been required to take place no later than, the end of the year referred to in that sub-paragraph as the third year following the underwriting year.
- (5) Regulations under section 755C may make provision with respect to the determination of the amount of the provision by which the technical provision is to be treated as replaced in cases falling within subsection (4) above.
- (6) In this section “general insurance business” means insurance business which is general business, as defined in section 1 of the <sup>M116</sup>Insurance Companies Act 1982.]

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#### Textual Amendments

**F67** S. 755B inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 14; S.I. 1998/3173, art. 2

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#### Marginal Citations

**M114** 1985 c. 6.  
**M115** 1985 c. 6.  
**M116** 1982 c. 50.

VALID FROM 31/07/1998

#### <sup>F68</sup>755C Application of Chapter where general insurance business of foreign company accounted for on non-annual basis.

- (1) The Treasury may by regulations provide for the provisions of this Chapter to have effect with prescribed modifications in any case where a non-resident company—
- (a) carries on general insurance business; and
  - (b) draws up accounts relating to that business using a method falling within subsection (2) of section 755B.
- (2) Regulations under subsection (1) above may—
- (a) make different provision for different cases;
  - (b) make provision having effect in relation to accounting periods of non-resident companies ending not more than one year before the date on which the regulations are made; and
  - (c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit.
- (3) In this section—
- “general insurance business” has the same meaning as in section 755B;

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“non-resident company” means a company resident outside the United Kingdom;

“prescribed” means prescribed in regulations under this section.]

### Textual Amendments

**F68** S. 755C inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 15; S.I. 1998/3173, art. 2

VALID FROM 28/07/2000

### [<sup>F69</sup>755D “Control” and the two “40 per cent” tests.

- (1) For the purposes of this Chapter “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.
- (2) Where two or more persons, taken together, have the power mentioned in subsection (1) above, they shall be taken for the purposes of this Chapter to control the company.
- (3) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.
- (4) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing—
  - (a) at least 40 per cent, but
  - (b) not more than 55 per cent,
 of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.
- (5) For the purposes of this Chapter any question—
  - (a) whether a company is controlled by a person, or by two or more persons taken together, or
  - (b) whether, in the case of any company, the applicable 40 per cent test is satisfied in the case of each of two persons who, taken together, control the company,
 shall be determined after attributing to each of the persons all the rights and powers mentioned in subsection (6) below that are not already attributed to that person for the purposes of subsections (1) to (4) above.
- (6) The rights and powers referred to in subsection (5) above are—



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- (a) rights and powers which the person is entitled to acquire at a future date or which he will, at a future date, become entitled to acquire;
  - (b) rights and powers of other persons, to the extent that they are rights or powers falling within subsection (7) below;
  - (c) if the person is resident in the United Kingdom, rights and powers of any person who is resident in the United Kingdom and connected with the person; and
  - (d) if the person is resident in the United Kingdom, rights and powers which for the purposes of subsection (5) above would be attributed to a person who is resident in the United Kingdom and connected with the person (a “UK connected person”) if the UK connected person were himself the person.
- (7) Rights and powers fall within this subsection to the extent that they—
- (a) are required, or may be required, to be exercised in any one or more of the following ways, that is to say—
    - (i) on behalf of the person;
    - (ii) under the direction of the person; or
    - (iii) for the benefit of the person; and
  - (b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.
- (8) In subsections (6)(b) to (d) and (7) above, the references to a person’s rights and powers include references to any rights or powers which he either—
- (a) is entitled to acquire at a future date, or
  - (b) will, at a future date, become entitled to acquire.
- (9) In paragraph (d) of subsection (6) above, the reference to rights and powers which would be attributed to a UK connected person if he were the person includes a reference to rights and powers which, by applying that paragraph wherever one person resident in the United Kingdom is connected with another person, would be so attributed to him through a number of persons each of whom is resident in the United Kingdom and connected with at least one of the others.
- (10) In determining for the purposes of this section whether one person is connected with another in relation to a company, subsection (7) of section 839 shall be disregarded.
- (11) References in this section—
- (a) to rights and powers of a person, or
  - (b) to rights and powers which a person is or will become entitled to acquire,
- include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.]

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#### Textual Amendments

**F69** S. 755D inserted (with effect in accordance with [Sch. 31 para. 9\(3\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 31 para. 4\(1\)](#)



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## 756 Interpretation and construction of Chapter IV.

<sup>M117</sup>(1) In this Chapter “trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades.

(2) For the purposes of this Chapter—

- (a) section 839 applies; and
- (b) subsection (10) of section 783 applies as it applies for the purposes of that section.

(3) The following provisions of Part XI apply for the purposes of this Chapter as they apply for the purposes of that Part—

- (a) section 416; and
- (b) section 417(7) to (9);

but, in the application of subsection (6) of section 416 for the purposes of this Chapter, for the words “five or fewer participators” there shall be substituted the words “persons resident in the United Kingdom”.

### Marginal Citations

**M117** Source—1984 s.91

## CHAPTER V

### OFFSHORE FUNDS

VALID FROM 22/07/2004

### *[<sup>F70</sup>Meaning of offshore fund*

#### Textual Amendments

**F70** Ss. 756A-756C and preceding cross-headings inserted (with effect in accordance with s. 145(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 26 para. 3](#) (with [Sch. 26 para. 17](#))

#### 756A General definition of offshore fund

(1) In this Chapter references to an offshore fund are to a collective investment scheme constituted by—

- (a) a company that is resident outside the United Kingdom, or
- (b) a unit trust scheme the trustees of which are not resident in the United Kingdom, or
- (c) arrangements not falling within paragraph (a) or (b) taking effect by virtue of the law of a territory outside the United Kingdom and which under that law create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of any part of the United Kingdom).

(2) Subsection (1) has effect subject to—

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section 756B (treatment of umbrella funds), and  
section 756C (treatment of funds comprising more than one class of interest).

(3) In this section “collective investment scheme” has the meaning given by section 235 of the Financial Services and Markets Act 2000.

VALID FROM 22/07/2004

### *Treatment of umbrella funds*

#### **756B Treatment of umbrella funds**

- (1) In this Chapter, an “umbrella fund” means an offshore fund—
- (a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them; and
  - (b) under which the participants are entitled to exchange rights in one pool for rights in another;
- and references in this Chapter to a part of an umbrella fund are to such of the arrangements as relate to a separate pool.
- (2) For the purposes of this Chapter (except subsection (1))—
- (a) each part of an umbrella fund shall be regarded as a separate offshore fund, and
  - (b) the umbrella fund as a whole shall not be regarded as an offshore fund.
- (3) In this Chapter, in relation to a part of an umbrella fund—
- (a) a reference to the assets of an offshore fund is to such of the assets of the umbrella fund as under the arrangements form part of the separate pool to which that part of the umbrella fund relates;
  - (b) a reference to the income of an offshore fund is to the income arising from those assets;
  - (c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest in that separate pool; and
  - (d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the umbrella fund being a non-qualifying fund.

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

**C61** Ss. 756A-756C applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), s. 489 (with Sch. 2 Pts. 1, 2)

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VALID FROM 22/07/2004

*Treatment of funds comprising more than one class of interest*

**756C Treatment of funds comprising more than one class of interest**

- (1) For the purposes of this Chapter where there is more than one class of interest in an offshore fund (the “main fund”)—
  - (a) each class of interest shall be regarded as a separate offshore fund, and
  - (b) the main fund shall not be regarded as an offshore fund.
- (2) In this section, references to a class of interest in an offshore fund do not include—
  - (a) a part of an umbrella fund which is regarded as an offshore fund by virtue of section 756B, or
  - (b) a class of interest in an offshore fund which by virtue of section 759(5), (6) or (8) is not a material interest in the fund.
- (3) In this Chapter, in relation to a class of interest in an offshore fund—
  - (a) a reference to the assets of an offshore fund is to the assets of the main fund;
  - (b) a reference to the income of an offshore fund is to such of the income of the main fund as is attributable to interests of that class under the arrangements constituting the main fund;
  - (c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest of that class; and
  - (d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the main fund being a non-qualifying fund.]

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

**C62** Ss. 756A-756C applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), s. 489 (with Sch. 2 Pts. 1, 2)

*Material interests in non-qualifying offshore funds*

**757 Disposal of material interests in non-qualifying offshore funds**

- <sup>M118</sup>(1) This Chapter applies to a disposal by any person of an asset if—
- (a) at the time of the disposal, the asset constitutes a material interest in an offshore fund which is or has at any material time been a non-qualifying offshore fund; or
  - (b) at the time of the disposal, the asset constitutes an interest in a company resident in the United Kingdom or in a unit trust scheme, the trustees of which are at that time resident in the United Kingdom and at a material time after 31st December 1984 the company or unit trust scheme was a non-qualifying offshore fund and the asset constituted a material interest in that fund;

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and for the purpose of determining whether the asset disposed of falls within paragraph (b) above, section 78 of the 1979 Act (equation of original shares and new holding) shall have effect as it has effect for the purposes of that Act.

- (2) <sup>M119</sup>Subject to the following provisions of this section and section 758, there is a disposal of an asset for the purposes of this Chapter if there would be such a disposal for the purposes of the 1979 Act.
- (3) Notwithstanding anything in paragraph (b) of subsection (1) of section 49 of the 1979 Act (general provisions applicable on death: no deemed disposal by the deceased) where a person dies and the assets of which he was competent to dispose include an asset which is or has at any time been a material interest in a non-qualifying offshore fund, then, for the purposes of this Chapter, other than section 758—
  - (a) immediately before the acquisition referred to in paragraph (a) of that subsection, that interest shall be deemed to be disposed of by the deceased for such a consideration as is mentioned in that subsection; but
  - (b) nothing in this subsection affects the determination, in accordance with subsection (1) above, of the question whether that deemed disposal is one to which this Chapter applies.
- (4) Subject to subsection (3) above, section 49 of the 1979 Act applies for the purposes of this Chapter as it applies for the purposes of that Act, and the reference in that subsection to the assets of which a deceased person was competent to dispose shall be construed in accordance with subsection (10) of that section.
- (5) Notwithstanding anything in section 85 of the 1979 Act (exchange of securities for those in another company) in any case where—
  - (a) the company which is company B for the purposes of subsection (1) of that section is or was at a material time a non-qualifying offshore fund and the company which is company A for those purposes is not such a fund, or
  - (b) under section 86 of that Act (reconstruction or amalgamation involving issue of securities) persons are to be treated, in consequence of an arrangement, as exchanging shares, debentures or other interests in or of an entity which is or was at a material time a non-qualifying offshore fund for assets which do not constitute interests in such a fund;
 then, subsection (3) of section 85 of that Act (which applies provisions of that Act treating transactions as not being disposals and equating original shares with a new holding in certain cases) shall not apply for the purposes of this Chapter.
- (6) In any case where, apart from subsection (5) above, section 85(3) of the 1979 Act would apply, the exchange concerned of shares, debentures or other interests in or of a non-qualifying offshore fund shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the exchange.
- (7) For the purposes of this section—
  - (a) a material time, in relation to the disposal of an asset, is [<sup>F71</sup>any time on or after] the earliest date on which any relevant consideration was given for the acquisition of the asset or, if that date is earlier than 1st January 1984, any time on or after 1st January 1984; and
  - (b) “relevant consideration” means consideration which, assuming the application to the disposal of Chapter II of Part II of the 1979 Act, would fall to be taken into account in determining the amount of the gain or loss accruing

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on the disposal, whether that consideration was given by or on behalf of the person making the disposal or by or on behalf of a predecessor in title of his whose acquisition cost represents, directly or indirectly, the whole or any part of the acquisition cost of the person making the disposal.

#### Textual Amendments

**F71** 1990 s.89 and Sch.14 para.10 (*correction of errors*)—*deemed always to have had effect.*

#### Marginal Citations

**M118** Source—1984 s.92(1), (7)

**M119** Source—1984 s.92(2)-(6), (8)

### 758 Offshore funds operating equalisation arrangements

<sup>M120</sup>(1) For the purposes of this Chapter, an offshore fund operates equalisation arrangements if, and at a time when, arrangements are in existence which have the result that where—

- (a) a person acquires by way of initial purchase a material interest in the fund at some time during a period relevant to the arrangements; and
- (b) the fund makes a distribution for a period which begins before the date of his acquisition of that interest;

the amount of that distribution which is paid to him (assuming him still to retain that interest) will include a payment of capital which is debited to an account maintained under the arrangements (“the equalisation account”) and which is determined by reference to the income which had accrued to the fund at the date of his acquisition.

(2) For the purposes of this section, a person acquires an interest in an offshore fund by way of initial purchase if—

- (a) his acquisition is by way of subscription for or allotment of new shares, units or other interests issued or created by the fund; or
- (b) his acquisition is by way of direct purchase from the persons concerned with the management of the fund and their sale to him is made in their capacity as managers of the fund.

(3) Without prejudice to section 757(1), this Chapter applies, subject to the following provisions of this section, to a disposal by any person of an asset if—

- (a) at the time of the disposal, the asset constitutes a material interest in an offshore fund which at that time is operating equalisation arrangements; and
- (b) the fund is not and has not at any material time (within the meaning of section 757(7)) been a non-qualifying offshore fund; and
- (c) the proceeds of the disposal do not fall to be taken into account as a trading receipt.

(4) This Chapter does not, by virtue of subsection (3) above, apply to a disposal if—

- (a) it takes place during such a period as is mentioned in subsection (1)(a) above; and
- (b) throughout so much of that period as precedes the disposal, the income of the offshore fund concerned has been of such a nature as is referred to in paragraph 3(1) of Schedule 27.

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- (5) An event which, apart from section 78 of the 1979 Act (reorganisations etc.), would constitute a disposal of an asset shall constitute such a disposal for the purpose of determining whether, by virtue of subsection (3) above, there is a disposal to which this Chapter applies.
- (6) The reference in subsection (5) above to section 78 of the 1979 Act includes a reference to that section as applied by section 85 of that Act (exchange of securities) [<sup>F72</sup> and a reference to section 78] as applied by section 82 of that Act (conversion of securities).

#### Textual Amendments

**F72** 1989 s.81(1) and (2) in respect of conversion of securities occurring on or after 14 March 1989. Previously “but not”.

#### Marginal Citations

**M120** Source—1984 s.93

## 759 Material interests in offshore funds

<sup>M121</sup>(1) In this Chapter references to a material interest in an offshore fund are references to such an interest in any of the following, namely—

- (a) a company which is resident outside the United Kingdom;
- (b) a unit trust scheme the trustees of which are not resident in the United Kingdom; and
- (c) any arrangements which do not fall within paragraph (a) or (b) above, which take effect by virtue of the law of a territory outside the United Kingdom and which, under that law, create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of any part of the United Kingdom);

and any reference in this Chapter to an offshore fund is a reference to any such company, unit trust scheme or arrangements in which any person has an interest which is a material interest.

- (2) Subject to the following provisions of this section, a person’s interest in a company, unit trust scheme or arrangements is a material interest if, at the time when he acquired the interest, it could reasonably be expected that, at some time during the period of seven years beginning at the time of his acquisition, he would be able to realise the value of the interest (whether by transfer, surrender or in any other manner).
- (3) For the purposes of subsection (2) above, a person is at any time able to realise the value of an interest if at that time he can realise an amount which is reasonably approximate to that portion which the interest represents (directly or indirectly) of the market value at that time of the assets of the company or, as the case may be, of the assets subject to the scheme or arrangements.
- (4) For the purposes of subsections (2) and (3) above—
- (a) a person is able to realise a particular amount if he is able to obtain that amount either in money or in the form of assets to the value of that amount; and
  - (b) if at any time an interest in an offshore fund has a market value which is substantially greater than the portion which the interest represents, as

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mentioned in subsection (3) above, of the market value at that time of the assets concerned, the ability to realise such a market value of the interest shall not be regarded as an ability to realise such an amount as is referred to in that subsection.

- (5) An interest in a company, scheme or arrangements is not a material interest if—
- (a) it is an interest in respect of any loan capital or debt issued or incurred for money which, in the ordinary course of a business of banking, is lent by a person carrying on that business; or
  - (b) it is a right arising under a policy of insurance.
- (6) Shares in a company falling within subsection (1)(a) above (an “overseas company”) do not constitute a material interest if—
- (a) the shares are held by a company and the holding of them is necessary or desirable for the maintenance and development of a trade carried on by the company or a company associated with it; and
  - (b) the shares confer at least 10 per cent. of the total voting rights in the overseas company and a right, in the event of a winding-up, to at least 10 per cent. of the assets of that company remaining after the discharge of all liabilities having priority over the shares; and
  - (c) not more than ten persons hold shares in the overseas company and all the shares in that company confer both voting rights and a right to participate in the assets on a winding-up; and
  - (d) at the time of its acquisition of the shares, the company had such a reasonable expectation as is referred to in subsection (2) above by reason only of the existence of—
    - (i) an arrangement under which, at some time within the period of seven years beginning at the time of acquisition, that company may require the other participators to purchase its shares; or
    - (ii) provisions of either an agreement between the participators or the constitution of the overseas company under which the company will be wound up within a period which is, or is reasonably expected to be, shorter than the period referred to in subsection (2) above; or
    - (iii) both such an arrangement and such provisions;
 and in this paragraph “participators” means the persons holding shares falling within paragraph (c) above.
- (7) For the purposes of subsection (6)(a) above, a company is associated with another company if one of them has control of the other within the meaning of section 416 or both of them are under the control, within the meaning of that section, of the same person or persons.
- (8) An interest in a company falling within subsection (1)(a) above is not a material interest at any time when the following conditions are satisfied, namely—
- (a) that the holder of the interest has the right to have the company wound up; and
  - (b) that, in the event of a winding up, the holder is, by virtue of the interest and any other interest which he then holds in the same capacity, entitled to more than 50 per cent. of the assets remaining after the discharge of all liabilities having priority over the interest or interests concerned.
- (9) The market value of any asset for the purposes of this Chapter shall be determined in like manner as it would be determined for the purposes of the 1979 Act except that,



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in the case of an interest in an offshore fund for which there are separate published buying and selling prices, section 150(4) of that Act (meaning of “market value” in relation to rights of unit holders in a unit trust scheme) shall apply with any necessary modifications for determining the market value of the interest for the purposes of this Chapter.

#### Marginal Citations

M121 Source—1984 s.94

### 760 Non-qualifying offshore funds

- <sup>M122</sup>(1) For the purposes of this Chapter, an offshore fund is a non-qualifying fund except during an account period of the fund in respect of which the fund is certified by the Board as a distributing fund.
- (2) An offshore fund shall not be certified as a distributing fund in respect of any account period unless, with respect to that period, the fund pursues a full distribution policy, within the meaning of Part I of Schedule 27.
- (3) Subject to Part II of that Schedule, an offshore fund shall not be certified as a distributing fund in respect of any account period if, at any time in that period—
- more than 5 per cent. by value of the assets of the fund consists of interests in other offshore funds; or
  - subject to subsections (4) and (5) below, more than 10 per cent. by value of the assets of the fund consists of interests in a single company; or
  - the assets of the fund include more than 10 per cent. of the issued share capital of any company or of any class of that share capital; or
  - subject to subsection (6) below, there is more than one class of material interest in the offshore fund and they do not all receive proper distribution benefits, within the meaning of subsection (7) below.
- (4) For the purposes of subsection (3)(b) above, in any account period the value, expressed as a percentage of the value of all the assets of an offshore fund, of that portion of the assets of the fund which consists of an interest in a single company shall be determined as at the most recent occasion (whether in that account period or an earlier one) on which the fund acquired an interest in that company for consideration in money or money’s worth; but for this purpose there shall be disregarded any occasion—
- on which the interest acquired constituted the “new holding” for the purposes of section 78 of the 1979 Act (equation of original shares and new holding), including that section as applied by any later provision of Chapter II of Part IV of that Act (reorganisation of share capital etc.); and
  - on which no consideration fell to be given for the interest acquired, other than the interest which constituted the “original shares” for the purposes of that section.
- (5) Except for the purpose of determining the total value of the assets of an offshore fund, an interest in a company shall be disregarded for the purposes of subsection (3)(b) above if—
- the company carries on (in the United Kingdom or elsewhere) a banking business providing current or deposit account facilities in any currency for members of the public and bodies corporate; and

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- (b) the interest consists of a current or deposit account provided in the normal course of the company's banking business.
- (6) There shall be disregarded for the purposes of subsection (3)(d) above any interests in an offshore fund—
- (a) which are held solely by persons employed or engaged in or about the management of the assets of the fund; and
  - (b) which carry no right or expectation to participate, directly or indirectly, in any of the profits of the fund; and
  - (c) which, on a winding up or on redemption, carry no right to receive anything other than the return of the price paid for the interests.
- (7) If in any account period of an offshore fund there is more than one class of material interests in the fund, the classes of interest do not, for the purposes of subsection (3)(d) above, all receive proper distribution benefits unless, were each class of interests and the assets which that class represents interests in and assets of a separate offshore fund, each of those separate funds would, with respect to that period, pursue a full distribution policy, within the meaning of Part I of Schedule 27.
- (8) For the purposes of this Chapter, an account period of an offshore fund shall begin—
- (a) whenever the fund begins to carry on its activities; and
  - (b) whenever an account period of the fund ends without the fund then ceasing to carry on its activities.
- (9) For the purposes of this Chapter, an account period of an offshore fund shall end on the first occurrence of any of the following—
- (a) the expiration of 12 months from the beginning of the period;
  - (b) an accounting date of the fund or, if there is a period for which the fund does not make up accounts, the end of that period; and
  - (c) the fund ceasing to carry on its activities.
- (10) For the purposes of this Chapter—
- (a) an account period of an offshore fund which is a company falling within section 759(1)(a) shall end if, and at the time when, the company ceases to be resident outside the United Kingdom; and
  - (b) an account period of an offshore fund which is a unit trust scheme falling within section 759(1)(b) shall end if, and at the time when, the trustees of the scheme become resident in the United Kingdom.
- (11) The provisions of Part III of Schedule 27 shall have effect with respect to the procedure for and in connection with the certification of an offshore fund as a distributing fund, and the supplementary provisions in Part IV of that Schedule shall have effect.

#### **Marginal Citations**

**M122** Source—1984 s.95

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### *Charge to tax of offshore income gains*

#### **761 Charge to income tax or corporation tax of offshore income gain.**

<sup>M123</sup>(1) If a disposal to which this Chapter applies gives rise in accordance with section 758 [F73 or Schedule] 28 to an offshore income gain, then, subject to the provisions of this section, the amount of that gain shall be treated for all the purposes of the Tax Acts as—

- (a) income arising at the time of the disposal to the person making the disposal, and
  - (b) constituting profits or gains chargeable to tax under Case VI of Schedule D for the chargeable period in which the disposal is made.
- (2) Subject to subsection (3) below, sections 2 and 12 of the 1979 Act (persons chargeable to tax in respect of chargeable gains) and section 11(2)(b) shall have effect in relation to income tax or corporation tax in respect of offshore income gains as they have effect in relation to capital gains tax or corporation tax in respect of chargeable gains.
- (3) In the application of section 12 of the 1979 Act in accordance with subsection (2) above, paragraphs (a) and (b) of subsection (1) of that section (which define the assets on the disposal of which chargeable gains are taxable) shall have effect with the omission of the words “situated in the United Kingdom and”.
- (4) In a case where section 12 of the 1979 Act has effect as modified by subsection (3) above, section 11 shall have effect as if, in subsection (2)(b), the words “situated in the United Kingdom” were omitted.
- (5) In the case of individuals resident or ordinarily resident but not domiciled in the United Kingdom, section 14 of the 1979 Act (which provides for taxation on a remittance basis) shall have effect in relation to income tax chargeable by virtue of subsection (1) above on an offshore income gain as it has effect in relation to capital gains tax in respect of gains accruing to such individuals from the disposal of assets situated outside the United Kingdom.
- (6) A charity shall be exempt from tax in respect of an offshore income gain if the gain is applicable and applied for charitable purposes; but if property held on charitable trusts ceases to be subject to charitable trusts and that property represents directly or indirectly an offshore income gain, the trustees shall be treated as if they had disposed of and immediately reacquired that property for a consideration equal to its market value, any gain (calculated in accordance with Schedule 28) accruing being treated as an offshore income gain not accruing to a charity.

In this subsection “charity” has the same meaning as in section 506 and “market value” has the same meaning as in the 1979 Act.

- (7) In any case where—
- (a) a disposal to which this Chapter applies is a disposal of settled property, within the meaning of the 1979 Act, and
  - (b) for the purposes of the 1979 Act, the general administration of the trusts is ordinarily carried on outside the United Kingdom and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the United Kingdom,

subsection (1) above shall not apply in relation to any offshore income gain to which the disposal gives rise.

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### Textual Amendments

**F73** 1990 s.89 and Sch.14 para.11 (correction of errors)—*deemed always to have had effect. Previously “and Schedule.”*

### Marginal Citations

**M123** Source—1984 s.96; 1987 Sch.15 16(1)

## 762 Offshore income gains accruing to persons resident or domiciled abroad.

<sup>M124</sup>(1) Section 15 of the 1979 Act (chargeable gains accruing to certain non-resident companies) shall have effect in relation to offshore income gains subject to the following modifications—

- (a) for any reference to a chargeable gain there shall be substituted a reference to an offshore income gain;
- (b) for the reference in subsection (7) to capital gains tax there shall be substituted a reference to income tax or corporation tax; and
- (c) paragraphs (b) and (c) of subsection (5) and subsection (8) shall be omitted.

(2) Subject to subsections (3) and (4) below, sections 80 to 84 of the Finance Act 1981 (gains of non-resident settlements) shall have effect in relation to offshore income gains subject to the following modifications—

- (a) for any reference to chargeable gains, other than the reference in section 80(5), there shall be substituted a reference to offshore income gains;
- (b) in section 80(2) for the words “tax under section 4(1) of the Capital Gains Tax Act 1979” there shall be substituted the words “income tax by virtue of section 761 of the Taxes Act”;
- (c) in section 80(6) the reference to tax shall be construed as a reference to income tax or corporation tax; and
- (d) sections 80(8) and 83(6) shall be omitted.

(3) In section 80(5) of the Finance Act 1981, both as it applies apart from subsection (2) above and as applied by subsection (2) above, the reference to chargeable gains shall be construed as including a reference to offshore income gains.

(4) If, in any year of assessment—

- (a) under subsection (3) of section 80 of the Finance Act 1981, as it applies apart from subsection (2) above, a chargeable gain falls to be attributed to a beneficiary, and
- (b) under that subsection, as applied by subsection (2) above, an offshore income gain also falls to be attributed to him,

subsection (4) of that section (gains attributed in proportion to capital payments received) shall have effect as if it required offshore income gains to be attributed before chargeable gains.

(5) Subject to subsection (6) below, for the purpose of determining whether an individual ordinarily resident in the United Kingdom has a liability for income tax in respect of an offshore income gain which arises on a disposal to which this Chapter applies where the disposal is made by a person resident or domiciled outside the United Kingdom—

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- (a) sections 739 and 740 shall apply as if the offshore income gain arising to the person resident or domiciled outside the United Kingdom constituted income becoming payable to him, and
  - (b) any reference in those sections to income of (or payable or arising to) such a person accordingly includes a reference to the offshore income gain arising to him by reason of the disposal to which this Chapter applies.
- (6) To the extent that an offshore income gain is treated, by virtue of subsection (1) or subsection (2) above, as having accrued to any person resident or ordinarily resident in the United Kingdom, that gain shall not be deemed to be the income of any individual for the purposes of section 739 or 740 or any provision of Part XV.

#### Marginal Citations

**M124** Source—1984 s.97

VALID FROM 21/07/2008

#### [<sup>E74</sup>762Z Offshore income gains: application of transfer of assets abroad provisions

- (1) Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) applies in relation to an offshore income gain arising to a person resident or domiciled outside the United Kingdom as if the offshore income gain were income becoming payable to the person.
- (2) Income treated as arising under that Chapter by virtue of subsection (1) is regarded as “foreign” for the purposes of section 726, 730 or 735 of that Act.
- (3) Subsection (1) does not apply in relation to an offshore income gain if (and to the extent that) it is treated, by virtue of section 762(1), as arising to a person resident or ordinarily resident in the United Kingdom.
- (4) The following provisions apply if section 762(2) applies in relation to an offshore income gain (“the relevant offshore income gain”).
- (5) If—
  - (a) by virtue of section 762(3) an offshore income gain is treated as arising in a tax year to a person resident or ordinarily resident in the United Kingdom, and
  - (b) it is so treated by reason of the relevant offshore income gain (or part of it), for that and subsequent tax years subsection (1) does not apply in relation to the relevant offshore income gain (or that part).
- (6) If, by virtue of subsection (1) as it applies in relation to the relevant offshore income gain, income is treated under Chapter 2 of Part 13 of ITA 2007 as arising in a tax year, reduce (with effect from the following tax year) the OIG amount in question by the amount of the income.]

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### Textual Amendments

**F74** Ss. 762ZA, 762ZB inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), Sch. 7 para. 94

VALID FROM 21/07/2008

### [<sup>F74</sup>762ZB] Income treated as arising under section 761(1): remittance basis

- (1) This section applies to income treated as arising under section 761(1) to an individual in a tax year if—
  - (a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year, and
  - (b) the individual is not domiciled in the United Kingdom in that year.
- (2) Treat the income as relevant foreign income of the individual.
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis)—
  - (a) treat any consideration obtained on the disposal of the asset as deriving from the income, and
  - (b) unless the consideration so obtained is of an amount equal to the market value of the asset, treat the asset as deriving from the income.
- (4) In subsection (3)—
  - (a) “the asset” means the asset the disposal of which causes the income to be treated as arising, and
  - (b) “the disposal” means the disposal mentioned in paragraph (a).]

### Textual Amendments

**F74** Ss. 762ZA, 762ZB inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), Sch. 7 para. 94

VALID FROM 22/07/2004

### [<sup>F75</sup>762A] Exchange of interests of different classes

- (1) This section applies where—
  - (a) classes of interest in an offshore fund (the “main fund”) are treated as separate offshore funds under section 756C; and
  - (b) as the result of—
    - (i) a reorganisation within the meaning of section 126 of the 1992 Act, or
    - (ii) a conversion of securities within the meaning of section 132 of that Act,
 a person exchanges an interest of one class (A) in the main fund for an interest of another class (B) in that fund.

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- (2) Where—
- (a) the interest of class A—
    - (i) is at the time of the exchange an interest in a non-qualifying offshore fund, or
    - (ii) has been an interest in such a fund at any material time, and
  - (b) the interest of class B is at the time of the exchange an interest in a fund which is certified by the Board as a distributing offshore fund,
- section 127 of the 1992 Act (equation of original shares and new holding) shall not prevent the exchange constituting a disposal for the purposes of this Chapter.
- (3) Any such disposal shall be treated as a disposal for a consideration equal to the market value of the rights at the time of the exchange.
- (4) In this section—
- “class of interest” has the same meaning as in section 756C(1);
- “material time” has the same meaning as in section 757.]

#### Textual Amendments

- F75** S. 762A inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 26 para. 15(1) (with Sch. 26 para. 17)

### 763 Deduction of offshore income gain in determining capital gain.

- <sup>M125</sup>(1) The provisions of this section apply where a disposal to which this Chapter applies gives rise to an offshore income gain; and, if that disposal also constitutes the disposal of the interest concerned for the purposes of the 1979 Act, then that disposal is in the following provisions of this section referred to as “the 1979 Act disposal”.
- (2) So far as relates to an offshore income gain which arises on a material disposal (within the meaning of Part I of Schedule 28), subsections (3) and (4) below shall have effect in relation to the 1979 Act disposal in substitution for section 31(1) of that Act (deduction of consideration chargeable to tax on income).
  - (3) Subject to the following provisions of this section, in the computation under Chapter II of Part II of the 1979 Act of any gain accruing on the 1979 Act disposal, a sum equal to the offshore income gain shall be deducted from the sum which would otherwise constitute the amount or value of the consideration for the disposal.
  - (4) Where the 1979 Act disposal is of such a nature that, by virtue of section 35 of that Act (part disposals) an apportionment falls to be made of certain expenditure, no deduction shall be made by virtue of subsection (3) above in determining, for the purposes of the fraction in subsection (2) of that section, the amount or value of the consideration for the disposal.
  - (5) If the 1979 Act disposal forms part of a transfer to which section 123 of that Act applies (roll-over relief on transfer of business in exchange wholly or partly for shares) then, for the purposes of subsection (4) of that section (determination of the amount of the deduction from the gain on the old assets) “B” in the fraction in that subsection (the value of the whole of the consideration received by the transferor in exchange for the business) shall be taken to be what it would be if the value of the consideration other



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than shares so received by the transferor were reduced by a sum equal to the offshore income gain.

- (6) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of section 757(6) or 758(5), the 1979 Act shall have effect as if an amount equal to the offshore income gain to which the disposal gives rise were given (by the person making the exchange concerned) as consideration for the new holding, within the meaning of section 79 of that Act (consideration given or received for new holding on a reorganisation).
- (7) In any case where—
- (a) a disposal to which this Chapter applies by virtue of subsection (3) of section 758 is made otherwise than to the offshore fund concerned or the persons referred to in subsection (2)(b) of that section; and
  - (b) subsequently, a distribution which is referable to the asset disposed of is paid either to the person who made the disposal or to a person connected with him; and
  - (c) the disposal gives rise (in accordance with Part II of Schedule 28) to an offshore income gain;

then, for the purposes of the Tax Acts, the amount of the first distribution falling within paragraph (b) above shall be taken to be reduced or, as the case may be, extinguished by deducting therefrom an amount equal to the offshore income gain referred to in paragraph (c) above and, if that amount exceeds the amount of that first distribution, the balance shall be set against the second and, where necessary, any later distribution falling within paragraph (b) above, until the balance is exhausted.

- (8) Section 839 shall apply for the purposes of subsection (7)(b) above.

**Marginal Citations**

M125 Source—1984 s.98

**764 Offshore income gains of trustees.**

<sup>M126</sup>Income arising in a year of assessment by virtue of section 761(1) to trustees shall be chargeable to income tax at a rate equal to the sum of the basic rate and the additional rate for that year.

**Marginal Citations**

M126 Source—1984 s.100(1)

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## CHAPTER VI

### MISCELLANEOUS

#### *Migration etc. of company*

#### **765 Migration etc. of companies.**

- <sup>M127</sup>(1) Subject to the provisions of this section [<sup>F76</sup>and section 765A], all transactions of the following classes shall be unlawful unless carried out with the consent of the Treasury, that is to say—
- (a) *for a body corporate resident in the United Kingdom to cease to be so resident; or*
  - (b) *for the trade or business or any part of the trade or business of a body corporate so resident to be transferred from that body corporate to a person not so resident; or*
  - <sup>F77</sup>(c) for a body corporate [<sup>F78</sup>resident in the United Kingdom] to cause or permit a body corporate not so resident over which it has control to create or issue any shares or debentures; or
  - (d) except for the purpose of enabling a person to be qualified to act as a director, for a body corporate so resident to transfer to any person, or cause or permit to be transferred to any person, any shares or debentures of a body corporate not so resident over which it has control, being shares or debentures which it owns or in which it has an interest.
- (2) Nothing in subsection (1)(c) above shall apply to the giving to the bankers of the body corporate not resident in the United Kingdom of any security for the payment of any sum due or to become due from it to them by reason of any transaction entered into with it by them in the ordinary course of their business as bankers.
- (3) Nothing in subsection (1)(c) above shall apply to the giving by the body corporate not resident in the United Kingdom to an insurance company of any security for the payment of any sum due or to become due from that body corporate to that company by reason of any transaction entered into with that body corporate by that company in the ordinary course of that company's business by way of investment of its funds.
- (4) Any consent granted by the Treasury under this section—
- (a) may be given either specially (that is to say, so as to apply only to specified transactions of or relating to a specified body corporate) or generally (that is to say, so as not only so to apply); and
  - (b) may, if given generally, be revoked by the Treasury; and
  - (c) may in any case be absolute or conditional; and
  - (d) shall be published in such a way as to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in the opinion of the Treasury publication is not necessary for that purpose.

#### **Textual Amendments**

**F76** 1990 s.68(1), (4)*in relation to transactions carried out on or after 1 July 1990.*

**F77** *Repealed by 1988(F) ss.105(6), 148 and Sch.14 Part IV from 15 March 1988. And see 1988(F) ss.61, 130-132 and Sch.7 for new requirements for companies from 15 March 1988.*

**F78** 1988(F) s.105(6)*from 15 March 1988. Previously*

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“so resident”.

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

**C63** Provisions of this section employed in 1988(F) ss.105, 130 and Sch.7.

**Marginal Citations**

**M127** Source—1970 s.482(1)-(4)

[<sup>F79</sup>**765A** Movements of capital between residents of member States.

- (1) Section 765(1) shall not apply to a transaction which is a movement of capital to which Article 1 of the <sup>M128</sup> Directive of the Council of the European Communities dated 24th June 1988 No. 88/361/EEC applies.
- (2) Where if that Article did not apply to it a transaction would be unlawful under section 765(1), the body corporate in question (that is to say, the body corporate resident in the United Kingdom) shall—
  - (a) give to the Board within six months of the carrying out of the transaction such information relating to the transaction, or to persons connected with the transaction, as regulations made by the Board may require, and
  - (b) where notice is given to the body corporate by the Board, give to the Board within such period as is prescribed by regulations made by the Board (or such longer period as the Board may in the case allow) such further particulars relating to the transaction, to related transactions, or to persons connected with the transaction or related transactions, as the Board may require.]

**Textual Amendments**

**F79** S. 765A inserted (with effect in accordance with s. 68(4) of the amending Act) by Finance Act 1990 (c. 29), s. 68(2)

**Marginal Citations**

**M128** O.J. No. L178/5

**766 Offences under section 765.**

- (1) <sup>M129</sup> Any person who, whether within or outside the United Kingdom, does or is a party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, something which is unlawful under section 765(1) shall be guilty of an offence under this section.
- (2) In any proceedings in respect of such an offence against a director of the body corporate in question (that is to say, the body corporate which is or was resident in the United Kingdom) or against any person who was purporting to act in that capacity—
  - (a) it shall be presumed that he was a party to every act of that body corporate unless he proves that it was done without his consent or connivance; and
  - (b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in or would amount to or result in, something which is unlawful under section 765(1) was to his knowledge such an act.

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- (3) <sup>M130</sup> Any person who is guilty of an offence under this section shall be liable on conviction on indictment—
- (a) to imprisonment for not more than two years or to a fine, or to both; or
  - (b) where the person in question is a body corporate which is or was resident in the United Kingdom, to a fine not exceeding an amount equal to three times the corporation tax, capital gains tax and income tax paid or payable which is attributable to the income, profits or gains (including chargeable gains) arising in the 36 months immediately preceding the commission of the offence, or £10,000, whichever is the greater;
- and proceedings in respect of such an offence alleged to have been committed by a person may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.
- (4) <sup>M131</sup> No proceedings for an offence under this section shall be instituted, in England or Wales, except by or with the consent of the Attorney General, or in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.

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**Marginal Citations**

**M129** Source—1970 s.482(5)

**M130** Source—1970 s.482(6)

**M131** Source—1970 s.482(11)

**767 Interpretation and commencement of sections 765 and 766.**

- (1) <sup>M132</sup> *A body corporate shall be deemed for the purposes of sections 765 and 766 to be resident or not to be resident in the United Kingdom according as the central management and control of its trade or business is or is not exercised in the United Kingdom.*
- (2) *If it is shown that it has been established as between the Crown and a body corporate for any income tax or corporation tax purpose that the body corporate was resident or ordinarily resident in the United Kingdom for any year of assessment or other period, it shall be presumed, except so far as the contrary is proved, that that body corporate was resident in the United Kingdom for the purposes of sections 765 and 766 at the beginning of that year of assessment or other period and that it continued to be so resident at all times thereafter.*
- (3) <sup>M133</sup> *Where the functions of a body corporate consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purposes of this section and sections 765 and 766 to be a business carried on by the body corporate.*
- (4) *Notwithstanding anything in the preceding provisions of this section or in sections 765 and 766, in no event shall a mere transfer of assets by a body corporate not resulting in a substantial change in the character or extent of the trade or business of that body corporate be treated for the purposes of sections 765 and 766 as a transfer of part of its trade or business<sup>F80</sup>.*
- (5) In this section and in sections 765 and 766—

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“share”, “debenture” and “director” have, in relation to any body corporate, the meanings respectively assigned to them by Part XXVI of the <sup>M134</sup>Companies Act 1985 in relation to a company;

“control” (except in the expression “central management and control”) has, in relation to a body corporate, the meaning given by section 840;

“transfer”, in relation to shares or debentures, includes a transfer of any beneficial interest therein;

“insurance company” means a body corporate lawfully carrying on business as an insurer, whether in the United Kingdom or elsewhere; and

“funds” in relation to an insurance company means the funds held by it in connection with that business;

*and a body corporate shall not be deemed for the purposes of this section and sections 765 and 766 to cease to be resident in the United Kingdom by reason only that it ceases to exist<sup>F81</sup>.*

- (6) <sup>M135</sup>This section and sections 765 and 766 shall come into force on 6th April 1988 to the exclusion of section 482 of the 1970 Act (which is re-enacted by those sections); but any offence committed before 6th April 1988 shall not be punishable under section 766 and neither this subsection nor any other provision of this Act shall prevent any such offence from being punishable as if this Act had not been passed.

#### Textual Amendments

**F80** Repealed by 1988(F) s.148 and Sch.14 Part IV from 15 March 1988 subject to 1988(F) s.105(6).

**F81** Repealed by 1988(F) s.148 and Sch.14 Part IV from 15 March 1988 subject to 1988(F) s.105(6).

#### Marginal Citations

**M132** Source—1970 s.482(7)

**M133** Source—1970 s.482(8)-(10)

**M134** 1985 c. 6.

**M135** Source—1970 s.482(12)

### *Change in ownership of company*

VALID FROM 03/05/1994

#### **767A Change in company ownership: corporation tax.**

- (1) Where it appears to the Board that—
- (a) there has been a change in the ownership of a company (“the tax-payer company”),
  - (b) any corporation tax assessed on the tax-payer company for an accounting period beginning before the change remains unpaid at any time after the relevant date, and
  - (c) any of the three conditions mentioned below is fulfilled,
- any person mentioned in subsection (2) below may be assessed by the Board and charged (in the name of the tax-payer company) to an amount of corporation tax in accordance with this section.

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- (2) The persons are—
  - (a) any person who at any time during the relevant period before the change in the ownership of the tax-payer company had control of it;
  - (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before that change.
- (3) In subsection (2) above, “the relevant period” means—
  - (a) the period of three years before the change in the ownership of the tax-payer company; or
  - (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the tax-payer company (“the earlier change”), the period elapsing between the earlier change and the later change.
- (4) The first condition is that—
  - (a) at any time during the period of three years before the change in the ownership of the tax-payer company the activities of a trade or business of that company cease or the scale of those activities become small or negligible; and
  - (b) there is no significant revival of those activities before that change occurs.
- (5) The second condition is that at any time after the change in the ownership of the tax-payer company, but under arrangements made before that change, the activities of a trade or business of that company cease or the scale of those activities become small or negligible.
- (6) The third condition is that—
  - (a) at any time during the period of six years beginning three years before the change in the ownership of the tax-payer company there is a major change in the nature or conduct of a trade or business of that company;
  - (b) there is a transfer or there are transfers of assets of the tax-payer company to a person mentioned in subsection (7) below or to any person under arrangements which enable any of those assets or any assets representing those assets to be transferred to a person mentioned in subsection (7) below;
  - (c) that transfer occurs or those transfers occur during the period of three years before the change in the ownership of the tax-payer company or after that change but under arrangements made before that change; and
  - (d) the major change mentioned in paragraph (a) above is attributable to that transfer or those transfers.
- (7) The persons are—
  - (a) any person mentioned in subsection (2)(a) above; and
  - (b) any person connected with him.
- (8) The amount of tax charged in an assessment made under this section must not exceed the amount of the tax which, at the time of that assessment, remains unpaid by the tax-payer company.
- (9) For the purposes of this section the relevant date is the date six months from the date on which the corporation tax is assessed as mentioned in subsection (1)(b) above.

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- (10) Any assessment made under this section shall not be out of time if made within three years from the date on which the liability of the tax-payer company to corporation tax for the accounting period mentioned in subsection (1)(b) above is finally determined.

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

**C64** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

VALID FROM 31/07/1998

**<sup>F82</sup>767A Change in company ownership: postponed corporation tax.**

- (1) Where it appears to the Board that—
- (a) there has been a change in the ownership of a company (“the transferred company”),
  - (b) any corporation tax relating to an accounting period ending on or after the change has been assessed on the transferred company or an associated company,
  - (c) that tax remains unpaid at any time more than six months after it was assessed, and
  - (d) the condition set out in subsection (2) below is fulfilled,
- any person mentioned in subsection (4) below may be assessed by the Board and charged to an amount of corporation tax not exceeding the amount remaining unpaid.
- (2) The condition is that it would be reasonable (apart from this section) to infer, from either or both of—
- (a) the terms of any transactions entered into in connection with the change, and
  - (b) the other circumstances of the change and of any such transactions,
- that at least one of those transactions was entered into by one or more of its parties on the assumption, as regards a potential tax liability, that that liability would be unlikely to be met, or met in full, if it were to arise.
- (3) In subsection (2) above the reference to a potential tax liability is a reference to a liability to pay corporation tax which—
- (a) in circumstances which were reasonably foreseeable at the time of the change in ownership, or
  - (b) in circumstances the occurrence of which is something of which there was at that time a reasonably foreseeable risk,
- would or might arise from an assessment made, after the change in ownership, on the transferred company or an associated company (whether or not a particular associated company).
- (4) The persons mentioned in subsection (1) above are—
- (a) any person who at any time during the relevant period had control of the transferred company;



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- (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before the change in the ownership of the transferred company.
- (5) In subsection (4) above, “the relevant period” means—
- (a) the period of three years before the change in the ownership of the transferred company; or
  - (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the transferred company (“the earlier change”), the period elapsing between the earlier change and the later change.
- (6) For the purposes of this section a transaction is entered into in connection with a change in the ownership of a company if—
- (a) it is the transaction, or one of the transactions, by which that change is effected; or
  - (b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change in ownership have formed or will form a part.
- (7) For the purposes of this section—
- (a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;
  - (b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and
  - (c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them—
    - (i) would not have been entered into independently of the other or others; or
    - (ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms.
- (8) In this section references, in relation to the transferred company and an assessment to tax, to an associated company are references to any company (whenever formed) which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the transferred company;
  - (b) is a company of which the transferred company has control; or
  - (c) is a company under the control of the same person or persons as the transferred company.
- (9) A person assessed and charged to tax under this section shall be assessed and charged in the name of the company by whom the tax to which the assessment relates remains unpaid.
- (10) Any assessment made under this section shall not be out of time if made within three years from the date of the final determination of the liability of the company by whom

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the tax remains unpaid to corporation tax for the accounting period for which that tax was assessed.]

#### Textual Amendments

**F82** S. 767AA inserted (with effect in accordance with s. 114(2) of the amending Act) by Finance Act 1998 (c. 36), s. 114(1)

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

**C65** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

VALID FROM 03/05/1994

#### 767B Change of company ownership: supplementary.

- (1) In relation to corporation tax assessed under section 767A—
  - (a) section 86 of the Management Act (interest on overdue tax), in so far as it has effect in relation to accounting periods ending on or before 30th September 1993, and
  - (b) section 87A of that Act (corresponding provision for corporation tax due for accounting periods ending after that date),
 shall have effect as if the references in section 86 to the reckonable date and in section 87A to the date when the tax becomes due and payable were, respectively, references to the date which is the reckonable date in relation to the tax-payer company and the date when the tax became due and payable by the tax-payer company.
- (2) A payment in pursuance of an assessment under section 767A shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes; but any person making such a payment shall be entitled to recover an amount equal to the payment from the tax-payer company.
- (3) In subsection (2) above the reference to a payment in pursuance of an assessment includes a reference to a payment of interest under section 86 or 87A of the Management Act (as they have effect by virtue of subsection (1) above).
- (4) For the purposes of section 767A, “control”, in relation to a company, shall be construed in accordance with section 416 as modified by subsections (5) and (6) below.
- (5) In subsection (2)(a) for “the greater part of” there shall be substituted “50 per cent. of”.
- (6) For subsection (3) there shall be substituted—
- (7) Where two or more persons together satisfy any of the conditions in subsection (2) above and do so by reason of having acted together to put themselves in a position where they will in fact satisfy the condition in question, each of those persons shall be treated as having control of the company.”

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- (7) In section 767A(6) “a major change in the nature or conduct of a trade or business” includes any change mentioned in any of paragraphs (a) to (d) of section 245(4); and also includes a change falling within any of those paragraphs which is achieved gradually as the result of a series of transfers.
- (8) In section 767A(6) “transfer”, in relation to an asset, includes any disposal, letting or hiring of it, and any grant or transfer of any right, interest or licence in or over it, or the giving of any business facilities with respect to it.
- (9) Section 839 shall apply for the purposes of section 767A(7).
- (10) Subsection (9) of section 768 shall apply for the purposes of section 767A as it applies for the purposes of section 768.

VALID FROM 31/07/1998

**[<sup>F83</sup>767C Change in company ownership: information.**

- (1) This section applies where it appears to the Board that—
  - (a) there has been a change in the ownership of a company (“the subject company”); and
  - (b) in connection with that change a person (“the seller”) may be or become liable to be assessed and charged to corporation tax under section 767A or 767AA.
- (2) The Board may by notice require any person to supply to them—
  - (a) any document in the person’s possession or power which appears to the Board to be relevant for determining any one or more of the matters referred to in subsection (3) below; or
  - (b) any particulars which appear to them to be so relevant.
- (3) Those matters are—
  - (a) whether the seller is or may become liable as mentioned in subsection (1) above and the extent of the liability or potential liability; and
  - (b) whether the subject company or an associated company is or may become liable to be assessed to any tax in respect of which the seller is or could become liable as mentioned in subsection (1) above, and the extent of the liability or potential liability of the subject company or associated company.
- (4) Without prejudice to the following provisions of this section, the references in subsection (2) above to documents and particulars are references to the documents and particulars specified or described in the notice.
- (5) A notice under subsection (2) above must specify the period, which must not be less than 30 days, within which the notice must be complied with.
- (6) Any person to whom any documents are supplied under this section may take copies of them or of any extracts from them.
- (7) A notice under subsection (2) above shall not oblige a person to supply any documents or particulars relating to the conduct of any pending appeal relating to tax.
- (8) In relation to any notice under subsection (2) above—

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- (a) subsection (4) of section 20B of the <sup>M136</sup>Taxes Management Act 1970 (rules relating to copies of documents) shall apply as it applies in relation to a notice under section 20(1) of that Act; and
- (b) subsections (8) to (14) of section 20B of that Act (rules about obtaining documents etc. from professional advisers) shall apply as they apply in relation to a notice under section 20(3) of that Act but as if any reference to an inspector were a reference to the Board;

and subsection (8C) of section 20 of that Act (exclusion of personal records and journalistic material) shall apply for the purposes of this section as it applies for the purposes of that section.

- (9) In this section references, in relation to the subject company and an assessment to tax, to an associated company are references to any company which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the subject company;
- (b) is a company of which the subject company has control; or
- (c) is a company under the control of the same person or persons as the subject company.
- (10) In this section “document” means anything in which information of any description is recorded.]

#### Textual Amendments

**F83** S. 767C inserted (with effect in accordance with s. 115(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 115(1)

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

**C66** Ss. 767A-768E: [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

#### Marginal Citations

**M136** 1970 c. 9.

### 768 Change in ownership of company: disallowance of trading losses.

<sup>M137</sup>(1) 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 carried on by the company, or
- (b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

no relief shall be given under section 393 by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

- (2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated

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as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.

- (3) The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.
- (4) In subsection (1) above “major change in the nature or conduct of a trade” includes—
- (a) a major change in the type of property dealt in, or services or facilities provided, in the trade; or
  - (b) a major change in customers, outlets or markets of the trade;
- 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 relation to any relief available under section 343 to a successor company, subsection (1) above shall apply as if any loss sustained by a predecessor company had been sustained by a successor company and as if the references to a trade included references to the trade as carried on by a predecessor company.
- (6) Where relief in respect of a company’s losses has been restricted under this section then, notwithstanding [F84 section 161(6)] [F85 of the 1990 Act], in applying the provisions of that Act about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made in taxing the company’s trade for any chargeable period before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership were sufficient to give effect to the allowance or deduction.
- (7) In applying subsection (6) above it shall be assumed that any profits or gains are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.
- (8) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than three years after), an assessment to give effect to the provisions of this section shall not be out of time if made within six years from that time, or the latest of those times.
- (9) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice by an inspector given for the purposes of this section, state whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities of any of them, shall furnish the name and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.

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#### Textual Amendments

**F84** Words in s. 768(6) substituted (retrospectively) by Finance Act 1994 (c. 9), Sch. 17 para. 7

**F85** 1990(C) s.164 and Sch.1 para.8(31). Previously “87(3) of the 1968 Act”.

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

**C67** See s.245—calculation etc. of ACT on change of ownership.

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### Marginal Citations

M137 Source—1970 s.483(1)-(7)

## [768A <sup>F86</sup>Change in ownership: disallowance of carry back of trading losses.

- (1) In any case where—
- (a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
  - (b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,
- no relief shall be given under section 393A(1) by setting a loss incurred by the company in an accounting period ending after the change in ownership against any profits of an accounting period beginning before the change in ownership.
- (2) Subsections (2) to (4), (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (3) This section applies in relation to changes in ownership occurring on or after 14th June 1991.]

### Textual Amendments

**F86** S. 768A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), Sch. 15 para. 20(1)

### Modifications etc. (not altering text)

**C68** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

VALID FROM 01/05/1995

## [<sup>F87</sup>768B Change in ownership of investment company: deductions generally.

- (1) This section applies where there is a change in the ownership of an investment company and—
- (a) after the change there is a significant increase in the amount of the company's capital; or
  - (b) within the period of six years beginning three years before the change there is a major change in the nature or conduct of the business carried on by the company; or
  - (c) the change in the ownership occurs at any time after the scale of the activities in the business carried on by the company has become small or negligible and before any considerable revival of the business.
- (2) For the purposes of subsection (1)(a) above, whether there is a significant increase in the amount of a company's capital after a change in the ownership of the company shall be determined in accordance with the provisions of Part I of Schedule 28A.



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- (3) In paragraph (b) of subsection (1) above “major change in the nature or conduct of a business” includes a major change in the nature of the investments held by the company, even if the change is the result of a gradual process which began before the period of six years mentioned in that paragraph.
- (4) For the purposes of this section—
  - (a) the accounting period of the company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;
  - (b) those parts shall be treated as two separate accounting periods; and
  - (c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.
- (5) In Schedule 28A—
  - (a) Part II shall have effect for identifying the amounts in issue for the accounting period being divided; and
  - (b) Part III shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.
- (6) Any sums which—
  - (a) are disbursed or treated as disbursed as expenses of management in the accounting period being divided, and
  - (b) under Part III of Schedule 28A are apportioned to either part of that period, shall be treated for the purposes of section 75 as disbursed in that part.
- (7) Any charges which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of sections 338 and 75 as paid in that part.
- (8) Any allowances which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of section 28 of the 1990 Act and section 75(4) as falling to be made in that part.
- (9) In computing the total profits of the company for an accounting period ending after the change in the ownership, no deduction shall be made under section 75 by reference to—
  - (a) sums disbursed or allowances falling to be made for an accounting period beginning before the change; or
  - (b) charges paid in such an accounting period.
- (10) To the extent that a payment of interest made by the company represents excess overdue interest, the payment shall not be deductible under section 338(1) from the total profits for the accounting period in which it is made.
- (11) Whether a payment of interest made by the company represents excess overdue interest, and if so to what extent, shall be determined in accordance with the provisions of Part IV of Schedule 28A.
- (12) Subject to the modification in subsection (13) below, subsections (6) to (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.

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(13) The modification is that in subsection (6) of section 768 for the words “relief in respect of a company’s losses has been restricted” there shall be substituted “deductions from a company’s total profits have been restricted”.

(14) In this section “investment company” has the same meaning as in Part IV.]

### Textual Amendments

**F87** Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 2

VALID FROM 01/05/1995

### [<sup>F87</sup>768CDeductions: asset transferred within group.

- (1) This section applies where—
  - (a) there is a change in the ownership of an investment company (“the relevant company”);
  - (b) none of paragraphs (a) to (c) of section 768B(1) applies;
  - (c) after the change in the ownership the relevant company acquires an asset from another company in circumstances such that section 171(1) of the 1992 Act applies to the acquisition; and
  - (d) a chargeable gain (“a relevant gain”) accrues to the relevant company on a disposal of the asset within the period of three years beginning with the change in the ownership.
- (2) 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.
- (3) For the purposes of this section—
  - (a) the accounting period of the relevant company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;
  - (b) those parts shall be treated as two separate accounting periods; and
  - (c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.
- (4) In Schedule 28A—
  - (a) Part V shall have effect for identifying the amounts in issue for the accounting period being divided; and
  - (b) Part VI shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.
- (5) Subsections (6) to (8) of section 768B shall apply in relation to the relevant company as they apply in relation to the company mentioned in subsection (1) of that section except that any reference in those subsections to Part III of Schedule 28A shall be read as a reference to Part VI of that Schedule.



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- (6) Subsections (7) and (9) below apply only where, in accordance with the relevant provisions of the 1992 Act and Part VI of Schedule 28A, an amount is included in respect of chargeable gains in the total profits for the accounting period of the relevant company in which the relevant gain accrues.
- (7) In computing the total profits of the relevant company for the accounting period in which the relevant gain accrues, no deduction shall be made under section 75 by reference to—
- (a) sums disbursed or allowances falling to be made for an accounting period of the relevant company beginning before the change in ownership, or
  - (b) charges paid in such an accounting period,
- from an amount of the total profits equal to the amount which represents the relevant gain.
- (8) For the purposes of this section, the amount of the total profits for an accounting period which represents the relevant gain is—
- (a) where the amount of the relevant gain does not exceed the amount which is included in respect of chargeable gains for that period, an amount equal to the amount of the relevant gain;
  - (b) where the amount of the relevant gain exceeds the amount which is included in respect of chargeable gains for that period, the amount so included.
- (9) To the extent that a payment of interest made by the relevant company in the accounting period in which the relevant gain accrues represents excess overdue interest, the payment shall not be deductible under section 338(1) from such part of the total profits for that accounting period as represents the relevant gain.
- (10) Whether a payment of interest made by the relevant company represents excess overdue interest, and if so to what extent, shall be determined in accordance with the provisions of Part IV of Schedule 28A.
- (11) Subsections (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (12) In this section—
- “the relevant provisions of the 1992 Act” means section 8(1) of and Schedule 7A to that Act; and
- “investment company” has the same meaning as in Part IV.]

#### Textual Amendments

**F87** Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 2

VALID FROM 31/07/1998

#### [<sup>F88</sup>768D] Change in ownership of company carrying on property business.

- (1) This section applies where there is a change in the ownership of a company carrying on a Schedule A business and—

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- (a) in the case of an investment company, either—
    - (i) paragraph (a), (b) or (c) of section 768B(1) applies, or
    - (ii) section 768C applies;
  - (b) in the case of a company which is not an investment company, paragraph (a) or (b) of section 768(1) applies.
- (2) Where this section applies the following provisions have effect to prevent relief being given under section 392A by setting a Schedule A loss incurred by the company before the change of ownership against profits arising after the change.
  - (3) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.
  - (4) The profits or losses of the period in which the change occurs are apportioned to those two periods—
    - (a) in the case of an investment company—
      - (i) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts II and III of Schedule 28A, or
      - (ii) where section 768C applies, in accordance with Parts V and VI of that Schedule, and
    - (b) in the case of a company which is not an investment company, according to the length of the periods,
 

unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.
  - (5) Relief under section 392A(1) against total profits of the same accounting period is available only in relation to each of those periods considered separately.
  - (6) A loss made in any accounting period beginning before the change of ownership may not be set off under section 392A(2) against, or deducted by virtue of section 392A(3) from—
    - (a) in the case of—
      - (i) an investment company where paragraph (a), (b) or (c) of section 768B(1) applies, or
      - (ii) a company which is not an investment company,
 

profits of an accounting period ending after the change of ownership;
    - (b) in the case of an investment company where section 768C applies, from so much of those profits as represents the relevant gain within the meaning of that section.
  - (7) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.
  - (8) In this section—
    - (a) any reference to a case where paragraph (a) or (b) of section 768(1) applies includes the case where that paragraph would apply if the reference there to a trade carried on by the company were to a Schedule A business carried on by it;
    - (b) “investment company” has the same meaning as in Part IV.

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- (9) The provisions of this section apply in relation to an overseas property business as they apply in relation to a Schedule A business.]

#### Textual Amendments

- F88** S. 768D inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 31 (with Sch. 5 para. 73)

VALID FROM 24/07/2002

#### [<sup>F89</sup>768E Change in ownership of company with unused non-trading loss on intangible fixed assets

- (1) Where there is a change in the ownership of an investment company and either—
  - (a) paragraph (a), (b) or (c) of section 768B(1) applies, or
  - (b) section 768C applies,
 the following provisions have effect to prevent relief being given under paragraph 35 of Schedule 29 to the Finance Act 2002 by setting a non-trading loss on intangible fixed assets incurred by the company before the change of ownership against profits arising after the change.
- (2) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.
- (3) The profits or losses of the period in which the change occurs are apportioned to those two periods—
  - (a) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts 2 and 3 of Schedule 28A, or
  - (b) where section 768C applies, in accordance with Parts 5 and 6 of that Schedule,
 unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.
- (4) Relief under paragraph 35 of Schedule 29 to the Finance Act 2002 against total profits of the same accounting period is available only in relation to each of those periods considered separately.
- (5) A loss made in any accounting period beginning before the change of ownership may not be set off under paragraph 35(3) of Schedule 29 to the Finance Act 2002 against—
  - (a) in a case where paragraph (a), (b) or (c) of section 768B(1) applies, profits of an accounting period ending after the change of ownership;
  - (b) in a case where section 768C applies, so much of those profits as represents the relevant gain within the meaning of that section.
- (6) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.

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(7) In this section “investment company” has the same meaning as in Part 4.]

#### Textual Amendments

**F89** S. 768E inserted (24.7.2002) by Finance Act 2002 (c. 23), Sch. 30 para. 4(3)

### 769 Rules for ascertaining change in ownership of company.

<sup>M138</sup>(1) For the purposes of [<sup>F90</sup>sections 768 and 768A] there is a change in the ownership of a company—

- (a) if a single person acquires more than half the ordinary share capital of the company; or
- (b) if two or more persons each acquire a holding of 5 per cent. or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company; or
- (c) if two or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent. unless it is an addition to an existing holding and the two holdings together amount to 5 per cent. or more of the ordinary share capital of the company.

(2) In applying subsection (1) above—

- (a) the circumstances at any two points of time with not more than three years between may be compared, and a holder at the later time may be regarded as having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;
- (b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;
- (c) to decide for the purposes of subsection (1)(b) or (c) above if any person has acquired a holding of at least 5 per cent., or a holding which makes at least 5 per cent. when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons within the meaning of section 839 shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;
- (d) any acquisition of shares under the will or on the intestacy of a deceased person and, if it is shown that the gift is unsolicited and made without regard to the provisions of [<sup>F90</sup>sections 768 and 768A], any gift of shares, shall be left out of account.

(3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then, in considering whether there has been a change in the ownership of the company for the purposes of section 768 [<sup>F91</sup>or 768A], holdings of all kinds of share capital, including preference shares, or of any particular

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category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.

- (4) Where section 768 [<sup>F91</sup>or 768A] has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.
- (5) A change in the ownership of a company shall be disregarded for the purposes of [<sup>F90</sup>sections 768 and 768A] if—
- (a) immediately before the change the company is the 75 per cent. subsidiary of another company, and
  - (b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent. subsidiary.
- [<sup>F92</sup>(6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—
- (a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;
  - (b) in a case falling within subsection (1)(b) above but not within subsection (1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and
  - (c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.
- (6A) In subsection (6) above—
- “the appropriate proportion”, in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and
- “relevant assets”, in relation to a company, means—
- (a) any ordinary share capital of another company, and
  - (b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.
- (6B) Notwithstanding that at any time a company (“the subsidiary company”) is a 75 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 not less than 75 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 not less than 75 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

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(6C) Schedule 18 shall apply for the purposes of subsection (6B) above as it applies for the purposes of section 413(7).]

(7) For the purposes of this section—

- (a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly;
- (b) *a company shall be deemed to be a 75 per cent. subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies*<sup>F93</sup>;
- (c) *the amount of ordinary share capital of one company owned by a second company through another company or other companies or partly directly and partly through another company or other companies, shall be determined in accordance with subsections (5) to (10) of section 838; and*

<sup>F94</sup>(d) “shares” includes stock.

(8) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition was made by a person holding such a contract, then the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.

#### Textual Amendments

- F90** Words in s. 769(1)(2)(d)(5) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 20(2)(a)**
- F91** Words in s. 769(3)(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 20(2)(b)**
- F92** S. 769(6)-(6C) substituted (*in relation to change of ownership occurring on or after 14 March 1989*) by Finance Act 1989 (c. 26, SIF 63:1), **s. 100(2)**.
- F93** Repealed by 1989 ss.100(3), 187 and Sch.17 Part IV where the change of ownership of a company would be treated as occurring on or after 14 March 1989.
- F94** Repealed by 1989 ss.100(3), 187 and Sch.17 Part IV where the change of ownership of a company would be treated as occurring on or after 14 March 1989.

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

- C69** See s.245—calculation etc. of ACT on change of ownership.

#### Marginal Citations

- M138** Source—1970 s.484

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### Transactions between associated persons

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

**C70** Ss. 770-772 modified (with effect in accordance with Sch. 9 para. 16(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 9 para. 16

VALID FROM 01/07/1999

#### [<sup>F95</sup>770A] Provision not at arm's length.

Schedule 28AA (which deals with provision made or imposed otherwise than at arm's length) shall have effect.]

#### Textual Amendments

**F95** S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), s. 108(1); S.I. 1998/3173, art. 2

### 770 Sales etc. at an undervalue or overvalue.

- (1) <sup>M139</sup>Subject to the provisions of this section and section 771, where any property is sold and—
- (a) the buyer is a body of persons over whom the seller has control or the seller is a body of persons over whom the buyer has control or both the buyer and the seller are bodies of persons over whom the same person or persons has or have control; and
  - (b) the property is sold at a price (“the actual price”) which is either—
    - (i) less than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length (“the arm's length price”), or
    - (ii) greater than the arm's length price,
 then, in computing for tax purposes the income, profits or losses of the seller where the actual price was less than the arm's length price, and of the buyer where the actual price was greater than the arm's length price, the like consequences shall ensue as would have ensued if the property had been sold for the arm's length price.
- (2) <sup>M140</sup>Subsection (1) above shall not apply—
- (a) in any case where—
    - (i) the actual price is less than the arm's length price, and
    - (ii) the buyer is resident in the United Kingdom and is carrying on a trade there, and
    - (iii) the price of the property falls to be taken into account as a deduction in computing the profits or gains or losses of that trade for tax purposes; or
  - (b) in any case where—
    - (i) the actual price is greater than the arm's length price, and



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- (ii) the seller is resident in the United Kingdom and is carrying on a trade there, and
  - (iii) the price of the property falls to be taken into account as a trading receipt in computing the profits or gains or losses of that trade for tax purposes; or
  - (c) in relation to any transaction in relation to which section 493(1) or (3) applies; or
  - (d) in relation to any other sale, unless the Board so direct.
- (3) <sup>M141</sup>Where a direction is given under subsection (2)(d) above all such adjustments shall be made, whether by assessment, repayment of tax or otherwise, as are necessary to give effect to the direction.

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

**C71** Ss. 770-772 modified (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), [Sch. 9 para. 16](#)

**Marginal Citations**

**M139** Source—1970 s.485(1), (2); 1975 s.17(2)

**M140** Source—1970 s.485(1), (2), (3); OTA s.14(6)

**M141** Source—1970 s.485(3)

**771 Transactions by petroleum companies.**

- (1) <sup>M142</sup>For the purposes of this section a company is a petroleum company if—
- (a) its activities include any relevant activities; or
  - (b) it is associated with a company whose activities include any relevant activities and its own activities include the ownership, operation or management of ships or pipelines (as defined in section 65 of the Pipelines Act 1962) used for transporting or conveying petroleum or petroleum products.
- (2) “Relevant activities” means any of the following —
- (a) the acquisition or disposal of petroleum or of rights to acquire or dispose of petroleum;
  - (b) the importation into or exportation from the United Kingdom of petroleum products or the acquisition or disposal of rights to such importation or exportation;
  - (c) the acquisition otherwise than for importation into the United Kingdom of petroleum products outside the United Kingdom or the disposal outside the United Kingdom of petroleum products not exported from the United Kingdom by the company making the disposal;
  - (d) the refining or processing of crude petroleum; and
  - (e) the extraction of petroleum, either under rights authorising it or under contractual or other arrangements with persons by whom such rights are exercisable.
- (3) Section 770(2) shall have effect with the omission of paragraphs (a) and (b) in any case where —
- (a) either party to the transaction is a petroleum company or both are petroleum companies; and
  - (b) the activities of either or both are or include activities—



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- (i) the profits from which are or would be chargeable to overseas tax for which credit could be given under section 790 or in pursuance of arrangements having effect by virtue of section 788; or
    - (ii) which are exploration or exploitation activities within the meaning of section 830; and
  - (c) the transaction is part of such activities or is connected with them.
- (4) Where both the buyer and the seller are resident in the United Kingdom and the Board, in pursuance of this section, direct that section 770(1) is to apply to the computation of the income, profits or losses of the one, the direction may extend the application of that subsection to the computation of the income, profits or losses of the other, and where it does so adjustments shall be made under section 770(3) accordingly.
- (5) Where any property is sold and either the buyer or the seller is a petroleum company or both are petroleum companies, then if —
  - (a) the sale is part of a transaction or series of transactions (whether or not between the same persons) and its terms are affected by those of the remainder of the transaction or transactions; or
  - (b) what is sold is petroleum extracted under rights exercisable by a company other than the buyer, and not less than 20 per cent. of that company's ordinary share capital was at the time of the sale owned directly or indirectly by one or more of the following, that is to say, the buyer and any companies associated with the buyer;section 770 shall apply in relation to the sale as if in subsection (1) of that section paragraph (a) were omitted.
- (6) Where a petroleum company was a party to a sale of property, then, in determining for the purposes of section 770 what price the property might have been expected to fetch had the parties to the transaction been independent persons dealing at arm's length and what consequences would have ensued in computing the income, profits or losses of the seller or the buyer for tax purposes if the property had been sold for that price, it shall be assumed —
  - (a) that the terms of the transaction would have been such as might have been expected to secure both to the buyer and to the seller a reasonable profit from transactions of the same kind carried out on similar terms over a reasonable period; and
  - (b) that the seller would not have been compelled by law or by executive action of any government to demand a price fixed by law or such action or a price not less than one so fixed; and
  - (c) that, if the transaction was part of a transaction or series of transactions (whether or not between the same persons), its terms would not have been affected by those of the remainder of the transaction or transactions; and
  - (d) in a case where the whole of the property sold is not delivered by the seller within 12 months after the date of the sale —
    - (i) that such part of the property as is delivered within that time would have fetched a price equal to that which it might have been expected to fetch if sold under a contract for the sale of that part and of no other property, being a contract made at the date of the sale; and
    - (ii) that such part of the property not so delivered as is delivered in any calendar month would have fetched a price equal to that which it might have been expected to fetch if sold under a contract for the sale

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of that part and of no other property, being a contract made at the material time in that month;

and no regard shall be had to the terms of similar transactions which were capable of being varied.

In this subsection “calendar month” means a month of the calendar year and “material time”, in relation to a calendar month, means noon on the middle day of the month which, in the case of a month containing an even number of days, shall be taken to be the last day of the first half of the month.

- (7) In this section — “petroleum” includes any mineral oil or relative hydrocarbon and, except in the expression “crude petroleum”, includes natural gas; “petroleum products” means products derived from petroleum and wholly or substantially of a hydrocarbon nature.
- (8) For the purposes of this section —
- (a) two companies are associated with one another if one is under the control of the other or both are under the control of the same person or persons, and “control” has the meaning given by section 840;
  - (b) any question whether ordinary share capital is owned by a company directly or indirectly shall be determined as for the purposes of section 838;
  - (c) rights are exercisable by a company if they are exercisable by that company alone or jointly with another company or companies.

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

**C72** Ss. 770-772 modified (29.4.1996) by Finance Act 1996 (c. 8), Sch. 9 para. 16

**Marginal Citations**

**M142** [1975 (O) s. 20(1), Sch. 9 1-6, 7(1), (2)(a)-(c); 1987 Sch. 11 7] 1962 c. 58.

**772 Information for purposes of section 770, and appeals.**

- <sup>M143</sup>(1) The Board may, by notice given to any body corporate, require it to give to the Board, within such time (not being less than 30 days) as may be specified in the notice, such particulars (which may include details of relevant documents) as may be so specified of any related transaction which appears to the Board—
- (a) to be, or to be connected with, a transaction with respect to which the Board might give a direction under section 770; or
  - (b) to be relevant for determining whether such a direction could or should be given in any case; or
  - (c) to be relevant for determining for the purposes of that section what price any property sold would have fetched had the sale been one between independent persons dealing at arm’s length.
- (2) For the purposes of a notice under subsection (1) above, a transaction is a related transaction if, but only if, it is one to which the body corporate to which the notice is given, or a body corporate associated with that body, was a party; and for the purposes of this subsection two bodies corporate are associated with one another if one is under the control of the other or both are under the control of the same person or persons.
- (3) Where, in the case of a transaction with respect to which it appears to the Board that a direction under section 770 might be given—

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- (a) one of the parties is a body corporate resident outside the United Kingdom and a 51 per cent. subsidiary of a body corporate (“the parent body”) resident in the United Kingdom; and
- (b) the other party is, or is a 51 per cent. subsidiary of, the parent body,
- the Board may, by notice given to the parent body, require it to make available for inspection any books, accounts or other documents or records whatsoever of the parent body or, subject to subsection (4) below, of any body of persons over which it has control which relate to that transaction, to any other transaction (of whatever nature) in the same assets, or to transactions (of whatever nature) in assets similar to those to which the first-mentioned transaction related.
- (4) If, in a case in which under subsection (3) above the parent body is by notice required to make available for inspection any books, accounts, documents or records of a body of persons resident outside the United Kingdom over which the parent body has control, it appears to the Board, on the application of the parent body, that the circumstances are such that the requirement ought not to have effect, the Board shall direct that the parent body need not comply with the requirement.
- (5) If, on an application under subsection (4) above, the Board refuse to give a direction under that subsection, the parent body may, by notice given to the Board within 30 days after the refusal, appeal to the Special Commissioners who, if satisfied that the requirement in question ought in the circumstances not to have effect, may determine accordingly.
- (6) Where it appears to the Board that a body of persons may be a party to a transaction or transactions with respect to which a direction under section 770 might be given, then, for the purpose of assisting the Board to determine whether such a direction should be given, an inspector specifically authorised in that behalf by the Board may, at any reasonable time, on production if so required of his authority—
- (a) enter any premises used in connection with the relevant trade carried on by that body of persons (that is to say, the trade in the course of which the transaction or transactions were effected),
- (b) inspect there any books, accounts or other documents or records whatsoever relating to that trade which he considers it necessary for him to inspect for that purpose, and
- (c) require any such books, accounts or other documents or records to be produced to him there for inspection.
- (7) An inspector’s authority for entering any premises under subsection (6) above shall state the name of the inspector and the name of the body of persons carrying on the trade in connection with which the premises are used.
- (8) If and so far as the question in dispute on an appeal to the General Commissioners or, in Northern Ireland, to a county court<sup>F96</sup> against an assessment to tax arises from a direction of the Board under section 770 the question shall be referred to and determined by the Special Commissioners.

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**Textual Amendments**

**F96** Repealed by 1990 s.132 and Sch.19 Part IV but not to affect proceedings instituted before 3 April 1989.

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

**C73** Ss. 770-772 modified (29.4.1996) by Finance Act 1996 (c. 8), Sch. 9 para. 16

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### Marginal Citations

M143 Source—1975 s.17(3)-(8); OTA s.20(2)

## 773 Interpretation of sections 770 and 771.

<sup>M144</sup>(1) Nothing in sections 770 and 771 shall be construed as affecting the operation of any of the provisions of the [<sup>F97</sup>1990 Act].

(2) In sections 770 and 772—

“body of persons” includes a partnership, and

“control” has the meaning given by section 840;

and, for the purposes of [<sup>F98</sup>section 770], a sale shall be deemed to take place at the time of completion or when possession is given, whichever is the earlier.

(3) In determining for the purposes of sections 770 and 771 whether any person (alone or with others) has control over a body of persons—

(a) there shall be attributed to him any rights or powers of a nominee for him, that is to say, any rights or powers which another possesses on his behalf or may be required to exercise on his direction or behalf;

(b) there may also be attributed to him any rights or powers of a person with whom he is connected (within the meaning of section 839 but omitting subsections (5) to (7) and the exception in subsection (4)), including any rights or powers of a nominee for such a person, that is to say, any rights or powers which another possesses on behalf of such a person or may be required to exercise on his direction or behalf.

(4) Sections 770, 771, except subsection (5)(b), and 772 and this section shall, with the necessary adaptations, have effect in relation to lettings and hirings of property, grants and transfers of rights, interests or licences and the giving of business facilities of whatever kind as they have effect in relation to sales, and the references in those sections to sales, sellers, buyers and prices shall be deemed to be extended accordingly.

### Textual Amendments

**F97** 1990(C) s.164 and Sch.1 para.8(32). *Previously*

“1968 Act or of Chapter I of Part III of the Finance Act 1971.”.

**F98** 1990 s.89 and Sch.14 para.12 (*correction of errors*)—*deemed always to have had effect. Previously*

“this section”.

### Marginal Citations

M144 Source—1970 s.485(4)-(6); 1975 s.17(1), (10); OTA Sch.9 7(2)(d)

## 774 Transactions between dealing company and associated company.

<sup>M145</sup>(1) Subject to the provisions of this section, where—

(a) a dealing company becomes entitled to a deduction, in computing the profits or gains of the company for tax purposes for any period, in respect of the depreciation in the value of any right subsisting against an associated company, being a non-dealing company; or

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- (b) a dealing company makes any payment to such an associated company, being a payment in respect of which the dealing company is entitled to a deduction in computing its profits or gains for tax purposes for any period;  
and the depreciation or payment is not brought into account in computing the profits or gains of the non-dealing company, that company shall be deemed to have received on the last day of the period income of an amount equal to the amount of the deduction and shall be chargeable in respect thereof under Case VI of Schedule D.
- (2) Where the non-dealing company is carrying on a trade, the income referred to in subsection (1) above shall, if the company so elects, not be so chargeable but shall be deemed to have been a receipt of the trade, or, if the company is carrying on more than one trade, to have been a receipt of such one of the trades as the company may choose.
- (3) Where the non-dealing company is carrying on, or was formed to carry on a trade, then if—
- (a) either—
    - (i) the right subsisting against it was a right to the repayment of moneys lent for meeting expenditure which has proved (in whole or in part) abortive, or
    - (ii) the payment to the company was made for meeting such expenditure, and
  - (b) that expenditure is such that the company is not entitled in respect of it to any allowance or deduction in computing losses or gains,
- subsection (1) above shall not apply in so far as the expenditure proved abortive.
- (4) For the purposes of this section—
- (a) “company” includes any body corporate;
  - (b) “dealing company” means a company dealing in securities, land or buildings and includes any company whose profits on the sale of securities, land or buildings are part of its trading profits;
  - (c) “non-dealing company” means any company which is not a dealing company;
  - (d) two or more companies shall be treated as associated companies if one has control of the other or others, or any person has control of both or all of them;
  - (e) references to a company (“the first company”) having control of another company (“the second company”) shall be construed as references to the first company having control of the second company either by itself or in conjunction with any person having control over the first company, and “control” has the meaning given by section 840;
  - (f) “securities” includes shares and stock.
- (5) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred any such liability to tax.

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**Marginal Citations**

M145 Source—1970 s.486

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VALID FROM 19/07/2006

*[<sup>F99</sup>Factoring of income receipts etc*

**Textual Amendments**

**F99** Ss. 774A-774G and preceding cross-heading inserted (with effect in accordance with Sch. 6 para. 6(2)-(7) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 6(1)

**774A Meaning of “structured finance arrangement” for purposes of s.774B**

- (1) For the purposes of section 774B an arrangement is a structured finance arrangement in relation to a person (“the borrower”) if the following condition is met in relation to the borrower.
- (2) The condition is that—
  - (a) under the arrangement the borrower receives from another person (“the lender”) any money or other asset (“the advance”) in any period,
  - (b) in accordance with generally accepted accounting practice the accounts of the borrower for that period record a financial liability in respect of the advance,
  - (c) the borrower, or a person connected with the borrower, makes a disposal of an asset (“the security”) under the arrangement to or for the benefit of the lender or a person connected with the lender,
  - (d) the lender, or a person connected with the lender, is entitled under the arrangement to payments in respect of the security, and
  - (e) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower.
- (3) For the purposes of this section, in any case where the borrower is a partnership, references to the accounts of the borrower include the accounts of any member of the partnership.
- (4) For the purposes of this section and section 774B—
  - (a) references to a person connected with the borrower do not include the lender, and
  - (b) references to a person connected with the lender do not include the borrower.

**774B Disregard of intended effects of arrangement involving disposals of assets**

- (1) If—
  - (a) an arrangement is a structured finance arrangement in relation to a person (“the borrower”), and
  - (b) the arrangement would (disregarding this section) have had the relevant effect (see subsections (2) and (3)),
 the arrangement is not to have that effect.
- (2) If the borrower is a person other than a partnership, the relevant effect is that—

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- (a) an amount of income on which the borrower, or a person connected with the borrower, would otherwise have been charged to tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower, or of a person connected with the borrower, is not so brought into account, or
  - (c) the borrower, or a person connected with the borrower, becomes entitled to an income deduction.
- (3) If the borrower is a partnership, the relevant effect is that—
- (a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or
  - (c) a member of the partnership becomes entitled to an income deduction.
- (4) If—
- (a) a person in relation to whom the structured finance arrangement would otherwise have had the relevant effect is a person within the charge to income tax, and
  - (b) in accordance with generally accepted accounting practice the accounts of the person record an amount as a finance charge in respect of the advance,
- that person may treat the amount for income tax purposes as interest payable on a loan.
- (5) If a person in relation to whom the structured finance arrangement would otherwise have had the relevant effect is a company within the charge to corporation tax—
- (a) the advance is to be treated, in relation to the company, for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as a money debt owed by the company,
  - (b) the arrangement is to be treated, in relation to the company, for the purposes of that Chapter as a loan relationship of the company (as a debtor relationship), and
  - (c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the company as a finance charge in respect of the advance is to be treated as interest payable under that relationship.
- (6) For the purposes of this section, in any case where the borrower is a partnership,—
- (a) references to accounts include the accounts of the partnership, and
  - (b) any deemed interest is treated as payable by the partnership (whether or not the finance charge is recorded in the accounts of the partnership).
- (7) For the purpose of determining when any deemed interest in respect of the advance is paid—
- (a) the payments mentioned in section 774A(2)(d) are treated as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance, and
  - (b) the interest elements of those payments are treated as paid when those payments are paid,

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and the deemed interest in respect of the advance is treated as paid at the times when the interest elements are treated as paid.

- (8) In this section “deemed interest” means any amount which is treated as interest as a result of subsection (4) or (5).
- (9) This section is subject to the exceptions contained in section 774E.

#### **774C Meaning of “structured finance arrangement” for purposes of s.774D**

- (1) For the purposes of section 774D an arrangement is a structured finance arrangement in relation to a partnership (“the borrower partnership”) if condition A or B is met in relation to the borrower partnership.
- (2) Condition A is that—
  - (a) a person (“the transferor partner”) disposes of an asset (“the security”) under the arrangement to the borrower partnership,
  - (b) the transferor partner is a member of the borrower partnership immediately after the disposal (whether or not a member immediately before the disposal),
  - (c) under the arrangement the borrower partnership receives from another person (“the lender”) any money or other asset (“the advance”) in any period,
  - (d) in accordance with generally accepted accounting practice the accounts of the borrower partnership for that period record a financial liability in respect of the advance,
  - (e) there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender (see subsection (6)),
  - (f) under the arrangement the share of the lender or person connected with the lender in the profits of the borrower partnership is determined by reference (wholly or partly) to payments in respect of the security, and
  - (g) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower partnership.
- (3) For the purposes of condition A, references to the accounts of the borrower partnership include the accounts of the transferor partner.
- (4) Condition B is that—
  - (a) the borrower partnership holds an asset (“the security”) as a partnership asset at any time before the arrangement is made,
  - (b) under the arrangement the borrower partnership receives from another person (“the lender”) any money or other asset (“the advance”) in any period,
  - (c) in accordance with generally accepted accounting practice the accounts of the borrower partnership for that period record a financial liability in respect of the advance,
  - (d) there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender,
  - (e) under the arrangement the share of the lender or person connected with the lender in the profits of the borrower partnership is determined by reference (wholly or partly) to payments in respect of the security, and



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- (f) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower partnership.
- (5) For the purposes of condition B, references to the accounts of the borrower partnership include the accounts of any person who is a member of the partnership immediately before the arrangement is made.
- (6) For the purposes of this section and section 774D there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender if directly or indirectly in consequence of, or otherwise in connection with, the arrangement—
  - (a) the lender, or a person connected with the lender, becomes a member of the borrower partnership at any time, or
  - (b) there is at any time a change in the share of a member of the borrower partnership in the profits of the borrower partnership in a case where that member is the lender or a person connected with the lender.
- (7) For the purposes of subsection (6)(b) the reference to a person connected with the lender includes a person who at any time becomes connected with the lender directly or indirectly in consequence of, or otherwise in connection with, the arrangement.

#### **774D Disregard of intended effects of arrangement involving change in relation to a partnership**

- (1) This section applies if—
  - (a) an arrangement is a structured finance arrangement in relation to a partnership (“the borrower partnership”), and
  - (b) any relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender would (disregarding this section) have had the following effect.
- (2) The effect is that—
  - (a) an amount of income on which a relevant member of the borrower partnership would otherwise have been charged to tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member of the borrower partnership is not so brought into account, or
  - (c) a relevant member of the borrower partnership becomes entitled to an income deduction.
- (3) In this section “relevant member of the borrower partnership” means—
  - (a) in any case where condition A in section 774C is met in relation to the arrangement, the transferor partner, and
  - (b) in any case where condition B in that section is met in relation to the arrangement, any person other than the lender who is a member of the borrower partnership immediately before the time at which the relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender occurs.
- (4) Part 9 of ITTOIA 2005 and section 114 above are to have effect in relation to any relevant member of the borrower partnership as if the relevant change in relation

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to the membership of the borrower partnership involving the lender or a person connected with the lender had not occurred.

Accordingly, the structured finance arrangement is not to have the effect mentioned in subsection (2).

- (5) The following provisions of this section confer relief from tax the availability of which depends on which of the conditions in section 774C is met in relation to the arrangement.
- (6) In any case where condition A in section 774C is met, if—
- (a) the transferor partner is a person within the charge to income tax, and
  - (b) in accordance with generally accepted accounting practice the accounts of the borrower partnership record an amount as a finance charge in respect of the advance,
- the transferor partner may treat the amount for income tax purposes as interest payable by the transferor partner on a loan.
- (7) In any case where condition A in that section is met, if the transferor partner is a company within the charge to corporation tax—
- (a) the advance is to be treated, in relation to the company, for the purposes of paragraph 19 of Schedule 9 to the Finance Act 1996 (and the other provisions of Chapter 2 of Part 4 of that Act) as a money debt owed by the borrower partnership,
  - (b) the arrangement is to be treated, in relation to the company, as a transaction for the lending of money from which that debt is treated as arising for those purposes, and
  - (c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the borrower partnership as a finance charge in respect of the advance is to be treated as interest payable by the company under that transaction.
- (8) For the purposes of subsections (6) and (7), references to the accounts of the borrower partnership include the accounts of the transferor partner.
- (9) In any case where condition B in section 774C is met, if—
- (a) a relevant member of the borrower partnership is a person within the charge to income tax, and
  - (b) in accordance with generally accepted accounting practice the accounts of the borrower partnership record an amount as a finance charge in respect of the advance,
- the relevant partner may treat the amount for income tax purposes as interest payable by the borrower partnership on a loan.
- (10) In any case where condition B in that section is met, if a relevant member of the borrower partnership is a company within the charge to corporation tax—
- (a) the advance is to be treated, in relation to the company, for the purposes of paragraph 19 of Schedule 9 to the Finance Act 1996 (and the other provisions of Chapter 2 of Part 4 of that Act) as a money debt owed by that partnership,
  - (b) the arrangement is to be treated, in relation to the company, as a transaction for the lending of money from which that debt is treated as arising for those purposes, and

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- (c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the borrower partnership as a finance charge in respect of the advance is to be treated as interest payable by the borrower partnership under that transaction.
- (11) For the purposes of subsections (9) and (10), references to the accounts of the borrower partnership include the accounts of any relevant member of the borrower partnership.
- (12) For the purpose of determining when any deemed interest in respect of the advance is paid—
- (a) the payments mentioned in section 774C(2)(f) or (4)(e) are treated as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance, and
  - (b) the interest elements of those payments are treated as paid when those payments are paid,
- and the deemed interest in respect of the advance is treated as paid at the times when the interest elements are treated as paid.
- (13) In this section “deemed interest” means any amount which is treated as interest as a result of any of subsections (6) to (10).
- (14) This section is subject to the exceptions contained in section 774E.

#### **774E Sections 774B and 774D: exceptions**

- (1) Section 774B or 774D does not apply if the whole of the advance under the structured finance arrangement—
- (a) is charged to tax on a relevant person (see subsection (7)) as an amount of income,
  - (b) is brought into account in calculating for tax purposes any income of a relevant person, or
  - (c) is brought into account for the purposes of any provision of the Capital Allowances Act as a disposal receipt, or proceeds from a balancing event or disposal event, of a relevant person.

For the purposes of this subsection the effect of section 785A (rent factoring of leases of plant or machinery) is to be disregarded.

- (2) Subsection (1)(c) is not to be taken as met in any case where—
- (a) the receipt or proceeds gives rise to a balancing charge, and
  - (b) the amount of the balancing charge is limited by any provision of the Capital Allowances Act.
- (3) Section 774B or 774D does not apply if, at all times, the whole of the advance under the structured finance arrangement—
- (a) is a debtor relationship of a relevant person for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships), or
  - (b) would be a debtor relationship of a relevant person for those purposes if that person were a company within the charge to corporation tax.

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For the purposes of this subsection references to a debtor relationship do not include a relationship to which section 100 of the Finance Act 1996 (money debts etc not arising from the lending of money) applies.

(4) Section 774B or 774D does not apply in so far as the structured finance arrangement is an arrangement in relation to which—

- (a) section 263A of the 1992 Act (agreements for sale and repurchase of securities) applies,
- (b) paragraph 15 of Schedule 9 to the Finance Act 1996 (repo transactions and stock-lending) applies, or
- (c) Chapter 5 of Part 2 of the Finance Act 2005 (alternative finance arrangements) has effect.

(5) Section 774B or 774D does not apply in so far as—

- (a) the security under the structured finance arrangement is plant or machinery which is the subject of a sale and finance leaseback, or
- (b) the structured finance arrangement is an arrangement in relation to which sections 228B to 228D of the Capital Allowances Act apply with the modifications contained in section 228F of that Act (lease and finance leaseback).

(6) For the purposes of subsection (5)(a), whether plant or machinery is the subject of a sale and finance leaseback is determined in accordance with section 221 of the Capital Allowances Act.

But, in applying that section, it is to be assumed that the words “and which are not a long funding lease in the case of the lessor” were omitted from section 219(1)(b) of that Act (meaning of “finance lease”).

(7) For the purposes of this section a “relevant person” means—

- (a) if section 774B applies, a person in relation to whom the structured finance arrangement would (but for that section) otherwise have had the relevant effect (within the meaning of that section), and
- (b) if section 774D applies, a relevant member of the borrower partnership (within the meaning of that section).

#### **774F Sections 774B and 774D: power to provide further exceptions**

(1) The Treasury may make regulations prescribing other circumstances in which section 774B or 774D is not to apply in relation to a structured finance arrangement.

(2) Any regulations under subsection (1) may make provision amending section 774E.

(3) The power to make regulations under subsection (1) includes—

- (a) power to make provision having effect in relation to times before the making of the regulations (but not times earlier than 6th June 2006),
- (b) power to make different provision for different cases or different purposes, and
- (c) power to make incidental, supplemental, consequential or transitional provision and savings.

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#### **774G Sections 774A to 774D: minor definitions etc**

- (1) For the purposes of sections 774A to 774D “arrangement” includes any agreement or understanding (whether or not legally enforceable).
- (2) For the purposes of sections 774A to 774D “income deduction” means—
  - (a) a deduction in calculating any income for tax purposes, or
  - (b) a deduction against total income or total profits.
- (3) For the purposes of sections 774A to 774D—
  - (a) references to a person's receiving any asset include the person's obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it,
  - (b) references to a disposal of an asset include anything which constitutes a disposal of the asset for the purposes of the 1992 Act,
  - (c) references to payments in respect of any asset include obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it.
- (4) For the purposes of sections 774A to 774D, section 839 (connected persons) applies.
- (5) For the purposes of sections 774A to 774D references to the accounts of any person who is a company include the consolidated group accounts of a group of companies of which it is a member.
- (6) If any person does not draw up accounts in accordance with generally accepted accounting practice, sections 774A to 774D apply as if the accounts had been drawn up by the person in accordance with that practice.
- (7) Sections 277 to 281 of ITTOIA 2005 and section 34 above (lease premiums) are not to apply in relation to a premium paid in respect of a grant of a lease where the grant constitutes a disposal of an asset for the purposes of section 774A(2)(c) or 774C(2)(a).]

#### *Other provisions*

#### **775 Sale by individual of income derived from his personal activities.**

- <sup>M146</sup>(1) Subject to subsection (7) below, this section has effect where—
- (a) transactions or arrangements are effected or made to exploit the earning capacity of an individual in any occupation by putting some other person in a position to enjoy all or any part of the profits or gains or other income, or of the receipts, derived from the individual's activities in that occupation, or anything derived directly or indirectly from any such income or receipts; and
  - (b) as part of, or in connection with, or in consequence of, the transactions or arrangements any capital amount is obtained by the individual for himself or for any other person; and
  - (c) the main object or one of the main objects of the transactions was the avoidance or reduction of liability to income tax.
- (2) Any such capital amount shall for all the purposes of the Income Tax Acts be treated as being earned income of the individual which arises when the capital amount is receivable, and which is chargeable to tax under Case VI of Schedule D.

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- (3) In this section—
- (a) references to any occupation are references to any activities of any of the kinds pursued in any profession or vocation, irrespective of whether the individual is engaged in a profession or vocation, or is employed by or holds office under some other person; and
  - (b) references in subsection (1) above to income or receipts include references to payments for any description of copyright or licence or franchise or other right deriving its value from the activities, including past activities, of the individual.
- (4) This section shall not apply to a capital amount obtained from the disposal—
- (a) of assets (including any goodwill) of a profession or vocation, or of a share in a partnership which is carrying on a profession or vocation, or
  - (b) of shares in a company,
- in so far as the value of what is disposed of, at the time of disposal, is attributable to the value of the profession or vocation as a going concern, or as the case may be to the value of the company's business, as a going concern.
- (5) If the value of the profession, vocation or business as a going concern is derived to a material extent from prospective income or receipts derived directly or indirectly from the individual's activities in the occupation, and for which, when all capital amounts are disregarded, the individual will not have received full consideration, whether as a partner in a partnership or as an employee or otherwise, subsection (4) above shall not exempt the part of the capital amount so derived.
- (6) In subsections (4) and (5) above references to the company's business include references to the business of any other company in which it holds shares directly or indirectly.
- (7) Where on any occasion an individual obtains a capital amount consisting of any property or right which derives substantially the whole of its value from the activities of the individual, or (as in the case where the individual acquires a stock option and subsequently exercises the stock option) there are two or more occasions on which an individual obtains a capital amount consisting of any such property or right, then—
- (a) tax under this section shall not be charged on any such occasion, but
  - (b) without prejudice to the generality of the provisions of this section or section 777, tax under this section shall be charged on the occasion when the capital amount, or any such capital amount, is sold or otherwise realised, and shall be so charged by reference to the proceeds of sale or the realised value.
- (8) For the purposes of subsection (1)(b) above the cases where an individual obtains any capital amount for some other person include cases where the individual has put some other person in a position to receive the capital amount by providing that other person with something of value derived, directly or indirectly, from the individual's activities in the occupation.
- (9) This section shall apply to all persons, whether resident in the United Kingdom or not, if the occupation of the individual is carried on wholly or partly in the United Kingdom.

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### Marginal Citations

M146 Source—1970 s.487(1)-(7)

VALID FROM 20/07/2005

## [<sup>F100</sup>775A] Transfers of rights to receive annual payments

- (1) This section applies in any case where—
  - (a) a person sells or transfers the right to receive an annual payment to which this section applies (see subsection (4)), and
  - (b) the consideration (if any) for the sale or transfer would not, apart from this section, be chargeable to tax.
- (2) In any such case, tax is charged—
  - (a) in the case of income tax, under this section; or
  - (b) in the case of corporation tax, under Case III of Schedule D.
- (3) Where this section applies—
  - (a) the tax is charged on an amount equal to the market value of the right to receive the annual payment;
  - (b) the tax is charged for the chargeable period in which the sale or transfer takes place;
  - (c) the person liable for the tax is the person who sells or transfers the right to the annual payment.
- (4) This section applies to any annual payment other than—
  - (a) an annual payment under a life annuity;
  - (b) an annual payment under a pension annuity;
  - (c) an annual payment to which section 347A applies (annual payments that are not charges on income);
  - (d) an annual payment in respect of which, by virtue of section 727 of ITTOIA 2005 (payments by individuals arising in UK), no liability to income tax arises under Part 5 of that Act.
- (5) This section applies in relation to part of an annual payment as it applies in relation to the whole of an annual payment.
- (6) For the purposes of this section, a sale or transfer of all rights under an agreement for annual payments, or under an annuity, is a sale or transfer of the rights to each individual payment under the agreement or annuity.
- (7) In this section—
 

“life annuity” means—

  - (a) a life annuity, as defined in section 657(1); or
  - (b) a life annuity, as defined in section 473(2) of ITTOIA 2005;

“pension annuity” means an annuity which is pension income within the meaning of Part 9 of ITEPA 2003 (see section 566(2) of that Act).]



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### Textual Amendments

**F100** S. 775A inserted (with effect in accordance with Sch. 7 para. 4(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 4(1)

## 776 Transactions in land: taxation of capital gains.

<sup>M147</sup>(1) This section is enacted to prevent the avoidance of tax by persons concerned with land or the development of land.

(2) This section applies wherever—

- (a) land, or any property deriving its value from land, is acquired with the sole or main object of realising a gain from disposing of the land; or
- (b) land is held as trading stock; or
- (c) land is developed with the sole or main object of realising a gain from disposing of the land when developed;

and any gain of a capital nature is obtained from the disposal of the land—

- (i) by the person acquiring, holding or developing the land, or by any connected person, or
- (ii) where any arrangement or scheme is effected as respects the land which enables a gain to be realised by any indirect method, or by any series of transactions, by any person who is a party to, or concerned in, the arrangement or scheme;

and this subsection applies whether any such person obtains the gain for himself or for any other person.

(3) Where this section applies, the whole of any such gain shall for all the purposes of the Tax Acts be treated—

- (a) as being income which arises when the gain is realised, and which constitutes profits or gains chargeable to tax under Case VI of Schedule D for the chargeable period in which the gain is realised; and
- (b) subject to the following provisions of this section, as being income of the person by whom the gain is realised.

(4) For the purposes of this section—

- (a) land is disposed of if, by any one or more transactions, or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land, or control over the land, is effectually disposed of; and
- (b) references in subsection (2) above to the acquisition or development of property with the sole or main object of realising the gain from disposing of the land shall be construed accordingly.

(5) For those purposes—

- (a) where, whether by a premature sale or otherwise, a person directly or indirectly transmits the opportunity of making a gain to another person, that other person's gain is obtained for him by the first-mentioned person; and
- (b) any number of transactions may be regarded as constituting a single arrangement or scheme if a common purpose can be discerned in them, or if there is other sufficient evidence of a common purpose.



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- (6) For the purposes of this section, such method of computing a gain shall be adopted as is just and reasonable in the circumstances, taking into account the value of what is obtained for disposing of the land, and allowing only such expenses as are attributable to the land disposed of; and in applying this subsection—
- (a) where a freehold is acquired and the reversion is retained on disposal, account may be taken of the way in which the profits or gains under Case I of Schedule D of a person dealing in land are computed in such a case; or
  - (b) account may be taken of the adjustments to be made in computing such profits or gains under subsections (2) and (3) of section 99.
- In the application of this subsection to Scotland, “freehold” means the estate or interest of the proprietor of the *dominium utile* or, in the case of property other than feudal property, of the owner, and “reversion” means the interest of the landlord in property subject to a lease.
- (7) Subsection (2)(c) above shall not apply to so much of any gain as is fairly attributable to the period, if any, before the intention to develop the land was formed, and which would not fall under paragraph (a) or (b) of that subsection; and in applying this subsection account shall be taken of the treatment under Case I of Schedule D of a person who appropriates land as trading stock.
- (8) If all or any part of the gain accruing to any person is derived from value, or an opportunity of realising a gain, provided directly or indirectly by some other person, whether or not put at the disposal of the first-mentioned person, subsection (3)(b) above shall apply to the gain, or that part of it, with the substitution of that other person for the person by whom the gain was realised.
- (9) This section shall not apply to a gain accruing to an individual which by virtue of sections 101 to 105 of the 1979 Act (private residences) is exempt from capital gains tax, or which would be so exempt but for the provisions of section 103(3) of that Act (residences acquired partly with a view to making a gain).
- (10) Where—
- (a) there is a disposal of shares in—
    - (i) a company which holds land as trading stock; or
    - (ii) a company which owns directly or indirectly 90 per cent. or more of the ordinary share capital of another company which holds land as trading stock; and
  - (b) all the land so held is disposed of—
    - (i) in the normal course of its trade by the company which held it, and
    - (ii) so as to procure that all opportunity of profit in respect of the land arises to that company,

then this section shall not by virtue of subsection (2)(i) above apply to any gain to the holder of shares as being a gain on property deriving value from that land (but without prejudice to any liability under subsection (2)(ii) above).
- (11) Where a person who considers that paragraph (a) or (c) of subsection (2) above may apply as respects a gain of a capital nature which that person has obtained from the disposal of land, or which he would obtain from a proposed disposal of land, supplies to the inspector to whom he makes his return of income written particulars showing how the gain has arisen or would arise—
- (a) the inspector shall, within 30 days from his receipt of the particulars, notify that person whether or not he is satisfied that, in the circumstances as described

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- in the particulars, the gain will not, or would not, be chargeable to tax on that person under this section; and
- (b) if the inspector notifies that person that he is so satisfied, the gain shall not be chargeable on that person under this section.
- (12) If the particulars given under this section with respect to the gain are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the inspector, any notification given by the inspector under subsection (11) above shall be void.
- (13) In this section—
- (a) references to the land include references to all or any part of the land, and “land” includes buildings, and any estate or interest in land or buildings;
- (b) references to property deriving its value from land include—
- (i) any shareholding in a company, or any partnership interest, or any interest in settled property, deriving its value directly or indirectly from land, and
- (ii) any option, consent or embargo affecting the disposition of land;
- and for the purposes of this section any question whether a person is connected with another shall be determined in accordance with section 839.
- (14) This section shall apply to all persons, whether resident in the United Kingdom or not, if all or any part of the land in question is situated in the United Kingdom.

#### Marginal Citations

M147 Source—1970 s.488; 1979(C) Sch.7

### 777 Provisions supplementary to sections 775 and 776.

- <sup>M148</sup>(1) This section has effect to supplement sections 775 and 776, and those sections and this section are together referred to as the relevant provisions.
- (2) In applying the relevant provisions account shall be taken of any method, however indirect, by which—
- (a) any property or right is transferred or transmitted; or
- (b) the value of any property or right is enhanced or diminished;
- and accordingly the occasion of the transfer or transmission of any property or right, however indirect, and the occasion when the value of any property or right is enhanced, may be an occasion when, under sections 775 and 776, tax becomes chargeable.
- (3) Subsection (2) above applies in particular—
- (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration; and
- (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning share capital or other rights in a company or any partnership or interest in settled property; and
- (c) to the creation of any option or consent or embargo affecting the disposition of any property or right, and to the consideration given for the option, or for the giving of the consent or the release of the embargo; and

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- (d) to the disposal of any property or right on the winding up, dissolution or termination of any company, partnership or trust.
- (4) In ascertaining for the purposes of the relevant provisions the intentions of any person, the objects and powers of any company, partners or trustees, as set out in any memorandum, articles of association or other document, shall not be conclusive.
- (5) In order to ascertain whether and to what extent the value of any property or right is derived from any other property or right, value may be traced through any number of companies, partnerships and trusts, and the property held by any company, partnership or trust shall be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.
- (6) In applying the relevant provisions—
- (a) any expenditure or receipt or consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances;
  - (b) all such valuations shall be made as are appropriate to give effect to sections 775 and 776.
- (7) For the purposes of the relevant provisions (and in particular for the purpose of the reference in section 775 to an individual putting some other person in a position to enjoy income or receipts) partners, or the trustees of settled property, or personal representatives, may be regarded as persons distinct from the individuals or other persons who are for the time being partners or trustees or personal representatives.
- (8) Where a person is assessed to tax under the relevant provisions in respect of consideration receivable by another person—
- (a) he shall be entitled to recover from that other person any part of that tax which he has paid; and
  - (b) if any part of that tax remains unpaid at the expiration of six months from the date when it became due and payable, it shall be recoverable from that other person as though he were the person assessed, but without prejudice to the right to recover it from the person actually assessed;
- and for the purposes of paragraph (a) above the Board or an inspector shall on request furnish a certificate specifying the amount of income in respect of which tax has been paid, and the amount of tax so paid; and the certificate shall be conclusive evidence of any facts stated in it.
- For the purposes of this subsection any income which a person is treated as having by virtue of sections 775 and 776 shall, subject to section 833(3), be treated as the highest part of his income.
- (9) If it appears to the Board that any person entitled to any consideration or other amount taxable under sections 775 and 776 is not resident in the United Kingdom, the Board may direct that section 349(1) shall apply to any payment forming part of that amount as if it were an annual payment charged with tax under Case III of Schedule D, but without prejudice to the final determination of the liability of that person, including any liability under subsection (8)(b) above.
- (10) Sections 775 and 776 have effect subject to Part XV and to any other provision of the Tax Acts deeming income to belong to a particular person.
- (11) Where under section 776(2)(c) any person is charged to tax on the realisation of a gain, and the computation of the gain proceeded on the footing that the land or some other property was appropriated at any time as trading stock, that land or other property

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shall be treated on that footing also for the purposes of section 122 of the 1979 Act (property becoming or ceasing to be stock in trade).

(12) Where under section 775(1)(b) or 776(8) the person charged to tax is a person other than the person for whom the capital amount was obtained or the person by whom the gain was realised, and the tax has been paid, then, for the purposes of sections 31 and 33 of the 1979 Act (profits taxable as income excluded from tax on capital gains), the person for whom the capital amount was obtained or the person by whom the gain was realised shall be regarded as having been charged to that tax.

(13) For the purposes of the relevant provisions—

“capital amount” means any amount, in money or money’s worth, which, apart from the sections 775 and 776, does not fall to be included in any computation of income for purposes of the Tax Acts, and other expressions including the word “capital” shall be construed accordingly;

“company” includes any body corporate; and

“share” includes stock;

and any amount in money or money’s worth shall not be regarded as having become receivable by some person until that person can effectively enjoy or dispose of it.

#### Marginal Citations

M148 Source—1970 s.489; 1979(C) Sch.7

### 778 Power to obtain information.

<sup>M149</sup>(1) The Board or an inspector may by notice require any person to furnish them within such time as the Board or the inspector may direct (not being less than 30 days) with such particulars as the Board or the inspector think necessary for the purposes of sections 775 and 776.

(2) The particulars which a person must furnish under this section, if he is required by a notice from the Board or the inspector so to do, include particulars—

(a) as to transactions or arrangements with respect to which he is or was acting on behalf of others;

(b) as to transactions or arrangements which in the opinion of the Board or the inspector should properly be investigated for the purposes of sections 775 and 776 notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under those sections; and

(c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in the notice.

(3) Notwithstanding anything in subsection (2) above, a solicitor—

(a) shall not be deemed for the purposes of paragraph (c) of that subsection to have taken part in any transaction or arrangement by reason only that he has given professional advice to a client in connection with the transaction or arrangement, and

(b) shall not, in relation to anything done by him on behalf of a client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client.

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

**C74** See S.I.1989 No.1343 (N.I.14) Sch.1 para.38(3) for construction in the case of a solicitor who is an officer or employee of a recognised body.

#### Marginal Citations

**M149** Source—1970 s.490

### 779 Sale and leaseback: limitation on tax reliefs.

<sup>M150</sup>(1) If land or any estate or interest in land is transferred from one person to another and—

- (a) as a result of a lease of the land or any part of the land granted at that time or subsequently by the transferee to the transferor, or
- (b) as a result of any other transaction or series of transactions affecting the land or any estate or interest in the land,

the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to pay any rent under a lease of the land or any part of the land, this section shall apply to all rent due under the lease from the transferor, or from any person who is associated with the transferor.

(2) If—

- (a) land or any estate or interest in land is transferred from one person to another, and
- (b) as a result of any transaction or series of transactions affecting the land or any estate or interest in the land, the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to make any payment (other than rent under a lease) for which any relevant tax relief is available, being a payment by way of rentcharge on the land or any part of the land or a payment in any other way connected with the land,

then this section shall apply to all such payments under the rentcharge or other transaction due from the transferor, or from any person who is associated with the transferor.

(3) The references in subsections (1) and (2) above to the transfer of an estate or interest in land include references to—

- (a) the granting of a lease or any other transaction involving the creation of a new estate or interest in the land;
- (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease; and
- (c) any transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner, or one of the owners, before and after the carrying out of the transaction or transactions, but another person becomes or ceases to become one of the owners;

and in relation to any such transaction or series of transactions any person who is an owner before the carrying out of the transaction or transactions, and is not the sole owner thereafter, shall be regarded for the purposes of this section as a transferor.

(4) A deduction by way of any relevant tax relief, being a deduction in respect of rent or of any other payment to which this section applies, shall not exceed the commercial

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rent for the period for which the rent or other payment is made of the land in respect of which that payment is made.

(5) If—

- (a) under subsection (4) above part of a payment which would otherwise be allowable as a deduction by way of any relevant tax relief is not so allowable, and
- (b) one or more subsequent payments are made by the transferor, or a person who is associated with the transferor, under the lease or other transaction,

that part of the first-mentioned payment may be carried forward and treated for the purposes of any such deduction by way of tax relief as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.

(6) For the purposes of subsection (4) above—

- (a) if more than one payment is made for the same period the payments shall be taken together;
- (b) if payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;
- (c) the preceding references to payments include references to parts of payments which under subsection (5) above are treated as if made at a time subsequent to that at which they were made, and to the extent that a part of a payment so carried forward under that subsection is not so allowable as a deduction by way of tax relief, it may again be carried forward under that subsection;
- (d) so much of any payment as is in respect of services or the use of assets or rates usually borne by the tenant shall be excluded, and in determining the amount to be so excluded provisions in any lease or agreement fixing the payments or parts of payments which are in respect of services or the use of assets may be overridden.

(7) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment was made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).

(8) For the purposes of making a comparison under subsection (4) above between a payment consisting of rent under a lease (“the actual lease”), or such payments taken together, and the commercial rent of the land, “commercial rent” shall mean the rent which might be expected to be paid under a lease of the land negotiated in the open market at the time when the actual lease was created, being a lease which is of the same duration as the actual lease, which is, as respects liability for maintenance and repairs, subject to the terms and conditions of the actual lease and which provides for rent payable at uniform intervals and—

- (a) at a uniform rate, or
- (b) if the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for any year is never less than the amount payable for any previous year), a rent which progresses by gradations proportionate to those provided by the actual lease.

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- (9) For the purpose of making a comparison under subsection (4) above between a payment which does not consist of rent under a lease (or such a payment taken together with other payments) and the commercial rent of the land, “commercial rent” shall mean the rent which might be expected to be paid under a tenant’s repairing lease negotiated in the open market at the time when the transaction was effected under which the payment or payments became due, being—
- (a) where the period over which payments are to be made under that transaction is not less than 200 years, or the obligation to make such payments is perpetual, a lease for 200 years; and
  - (b) where that period is less than 200 years, a lease which is of the same duration as that period.
- (10) In this section references to rent under a lease include references to rent which the person entitled to the lease is under subsection (4), (5) or (6) of section 37 or under section 87 treated, for any purpose, as paying in respect of land comprised in the lease, and such rent shall be treated for the purposes of this section as having been paid from day to day as it has become due.
- (11) For the purposes of this section the following persons shall be deemed to be associated with one another, that is—
- (a) the transferor in any such transaction as is described in subsection (1) or (2) above, and the transferor in another such transaction, if those two persons are acting in concert, or if the two transactions are in any way reciprocal, and any person who is an associate of either of those associated transferors;
  - (b) any two or more bodies corporate participating in, or incorporated for the purposes of, a scheme for the reconstruction of any body or bodies corporate or for the amalgamation of any two or more bodies corporate;
  - (c) any persons who are associates as defined in section 783(10).
- (12) In this section—
- “asset” means any description of property or rights other than land or an interest in land;
  - “lease” includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined; and in relation to such land, expressions in this section relating to interests in land and their disposition shall be construed accordingly;
  - “rent” includes any payment made under a lease; and
  - “tenant’s repairing lease” means a lease where the lessee is under an obligation to maintain and repair the whole, or substantially the whole, of the premises comprised in the lease.
- (13) For the purposes of this section the following are deductions by way of relevant tax relief, that is to say—
- (a) a deduction in computing profits or gains chargeable under Schedule A allowable by virtue of sections 25, 26 and 28 to 31 and Schedule 1;
  - (b) a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax;
  - (c) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 392 or 396;



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- (d) allowance of a payment under section 75 or 76;
- (e) a deduction from emoluments to be assessed under Schedule E made in pursuance of section 198(1) or allowable in computing losses in an employment for tax purposes;
- (f) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.

(14) This section shall not apply if the transfer described in subsection (1) or (2) above was on or before 14th April 1964.

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

**C75** S. 779 restricted (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 23**

**C76** S. 779(1)(2) excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 24(8)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

#### Marginal Citations

**M150** Source—1970 s.491

### 780 Sale and leaseback: taxation of consideration received.

<sup>M151</sup>(1) If, in any case where a person (“the lessee”) who is a lessee of land under a lease having not more than 50 years to run (“the original lease”) is entitled in respect of the rent under the lease to a deduction by way of tax relief which is a relevant tax relief for the purposes of section 779—

- (a) the lessee assigns the original lease to another person, or surrenders it to his landlord, for a consideration which apart from this section would not be taxable otherwise than as capital in the hands of the lessee, and
- (b) there is granted or assigned to the lessee another lease (“the new lease”) of or including the whole or any part of the land which was the subject of the original lease for a term not exceeding 15 years;

then, subject to the following provisions of this section, the provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply in relation to the rent under the new lease, and for the purposes of the Tax Acts a proportion of the consideration received by the lessee shall be treated not as a capital receipt but in accordance with subsection (3) below.

(2) For the purposes of this section—

- (a) if the aggregate of the rent payable under the new lease in respect of any rental period ending on a date falling before the 15th anniversary of the date on which the term of the new lease begins is greater than the aggregate of the rent payable under the new lease in respect of the period of equal duration beginning on the day following that date, then unless the term of the new lease would be treated as ending on an earlier date by virtue of paragraph (b) below, that term shall be treated as ending on that date;
- (b) if under the terms of the new lease—
  - (i) the lessor of the lessee has power to determine the new lease at a time before the expiry of the term for which it was granted, or
  - (ii) the lessee has power to vary his obligations under the new lease so as to reduce the rent which he would otherwise have to pay or in any other manner beneficial to him,

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then, unless the term of the new lease would be treated as ending on an earlier date by virtue of paragraph (a) above, that term shall be treated as ending on the earliest date with effect from which, in exercise of that power, the lessor or the lessee could determine the new lease or, as the case may be, the lessee could so vary his obligations;

and in any case where a rentcharge payable by the lessee is secured on the whole or any part of the property which is the subject of the new lease, the rent payable under the new lease shall be treated for the purposes of paragraphs (a) and (b) above as equal to the aggregate of the rentcharge and the rent payable under the terms of that lease.

- (3) Subject to the following provisions of this section, the proportion of the consideration received by the lessee as mentioned in subsection (1) above, or of any instalment of that consideration, which for the purposes of the Tax Acts is to be treated not as a capital receipt but in accordance with this subsection shall be determined by the formula—

$$\frac{16 - N}{15}$$

where N is the term of the new lease expressed in years or, if that term is less than a year, where N is 1; and that proportion shall be treated for the purposes of the Tax Acts—

- (a) as a receipt of a trade, profession or vocation, if the rent payable by the lessee under the new lease is allowable as a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax and if the consideration is received by the lessee in the course of that trade, profession or vocation; and
- (b) in any other case, as a profit or gain chargeable under Case VI of Schedule D.
- (4) In any case where the property which is the subject of the new lease does not include the whole of the property which was the subject of the original lease, the consideration received by the lessee shall be treated for the purposes of subsection (3) above as reduced to that portion of the consideration which is reasonably attributable to such part of the property which was the subject of the original lease as consists of, or is included in, the property which is the subject of the new lease.
- (5) *Schedule 2 shall have effect for the purposes of giving relief, on a claim being made in that behalf, from any increase in an individual's liability to income tax which is attributable to any amount being treated, by virtue of subsection (3) above, as an income receipt for a single year of assessment rather than as a series of such receipts during the term of the new lease; and in the application of that Schedule by virtue of this subsection for the definitions of "chargeable sum" and "relevant period" there shall be substituted the following definitions—*
- " "chargeable sum" means the amount in respect of which, by virtue of subsection (3) above, the claimant is chargeable to income tax for the year of assessment;"*
- " "relevant period", in relation to any chargeable sum, means the term of the new lease."*
- (6) Where by agreement with his landlord, the lessee varies the terms of the original lease in such a manner that, in return for such a consideration as is specified in subsection (1)

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- (a) above, the lessee undertakes to pay, during a period ending not later than 15 years after the date on which the consideration, or if the consideration is paid in instalments, the last such instalment, is paid to the lessee, a rent greater than that payable under the original lease, he shall be treated for the purposes of this section—
- (a) as having surrendered the original lease for that consideration, and
  - (b) as having been granted a new lease for a term not exceeding 15 years but otherwise on the terms of the original lease as so varied.
- (7) References in this section to the lessee (other than in subsection (1)(a) above) include references to a person who is a partner or associate of the lessee or an associate of a partner of the lessee; and for the purposes of this section the expression “associate” shall be construed in accordance with 783(10).
- (8) Subject to subsection (7) above, expressions used in this section have the meanings assigned to them by section 24, and in subsection (2)(a) above “rental period” means a period in respect of which a payment of rent falls to be made, and for the purposes of that subsection, in a case where the rental period is a quarter or a month, each such period shall be treated as of equal duration.
- (9) The preceding provisions of this section shall not apply if the lessee had, before 22nd June 1971, a right enforceable at law or in equity to the grant of the new lease, but in any case where, apart from this subsection, those provisions would apply, no part of the rent paid under the new lease shall be treated as a payment of capital, and the provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply accordingly.

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

C77 S. 780 excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), s. 149(1)(f), [Sch. 7 para. 23](#) (with s. 43)

**Marginal Citations**

M151 Source—1972 s.80

**781 Assets leased to traders and others.**

- <sup>M152</sup>(1) Subject to section 782, where—
- (a) a deduction by way of tax relief which is one of the kinds listed in subsection (4) below is allowable in respect of a payment made under a lease of an asset of any description, and
  - (b) before, at or after the time when the payment is made, either—
    - (i) the person who made the payment has obtained or obtains a capital sum in respect of the lessee’s interest in the lease, or
    - (ii) the lessor’s interest in the lease, or any other interest in the asset, has belonged to an associate of the person who made the payment, and that associate has obtained a capital sum in respect of that interest,
 the person obtaining that sum shall be charged under Case VI of Schedule D for the chargeable period in which the sum is obtained with tax on an amount equal to the amount of the payment in respect of which tax relief is so allowed.
- (2) A person shall not be assessed to tax under subsection (1) above on any amount to the extent to which it exceeds the capital sum by reference to which he is so assessed.

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- (3) Subsection (1) above shall not apply to payments under a lease created on or before 14th April 1964.
- (4) The kinds of deductions by way of tax relief to which subsection (1) above applies are as follows—
  - (a) a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax;
  - (b) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 392 or 396;
  - (c) allowance of a payment under section 75 or 76;
  - (d) a deduction from emoluments to be assessed under Schedule E made in pursuance of section 198(1) or allowable in computing losses in an employment for tax purposes;
  - (e) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.
- (5) Where—
  - (a) the deduction by way of tax relief mentioned in subsection (1)(a) above is a deduction in computing, for income tax purposes, profits or gains or losses of a trade, profession or vocation, or arising from woodlands, and
  - (b) any part of the payments made under the lease by the person obtaining the capital sum is a payment in respect of which a deduction is not allowed for the reason that the whole or any part of the period in which the payment would fall to be allowed is not a period on the profits or gains of which income tax falls to be computed in respect of the trade, profession or vocation,for the reference in subsection (2) above to the amount of the capital sum there shall be substituted a reference to that amount after deducting the amount of the payment in respect of which a deduction is not allowed for that reason.
- (6) So far as in respect of a capital sum any part of a payment allowed as a deduction by way of tax relief of a kind to which this section applies is taken into account in making an assessment under subsection (1) above, that part of the payment shall be left out of account in determining whether any and if so what amount should be assessed by reference to any other capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.
- (7) There shall be made all such adjustments of tax, whether by way of making assessments or by repayment of tax, as are required after the making of any such payment as is described in subsection (1) above to give effect to the charge under that subsection in respect of a sum obtained before the making of the payment.
- (8) Notwithstanding anything in the Tax Acts limiting the time within which an assessment may be made or a claim for relief may be admitted any such adjustment may be made, by making an assessment or otherwise, at any time not more than six years from the end of the chargeable period in which the payment was made.
- (9) This section shall not apply if the capital sum obtained in respect of the lessee's interest in a lease constituting a hire-purchase agreement for machinery or plant is a sum which is required to be brought into account as the whole or part of the disposal value of the machinery or plant under section [F10160(2) of the 1990 Act].

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### Textual Amendments

**F101** 1990(C) s.164 and Sch.1 para.8(33). *Previously*  
“45(2) of the Finance Act 1971”.

### Modifications etc. (not altering text)

**C78** S. 781 modified (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(1)-(4)**

**C79** S. 781 excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(6)**

**C80** S. 781 modified (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 18(1)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

**C81** S. 781 modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 11(1)**

**C82** See 1979(C) s.106 and Sch.3 para.9—*amounts charged under s.781 to be excluded in computing capital gains.*

### Marginal Citations

**M152** Source—1970 s.492 (1)-(5), (7)-(9); 1971 Sch.8 16(7)

## 782 Leased assets: special cases.

- <sup>M153</sup>(1) This section shall apply, and section 781 shall not apply, to payments—
- (a) which are allowable by way of deductions in computing the profits or gains or losses of a trade, and
  - (b) which are made under a lease of an asset which at any time before the creation of the lease was used for the purposes—
    - (i) of that trade; or
    - (ii) of another trade carried on by the person who at that time or later was carrying on the first-mentioned trade;
 and when so used was owned by the person carrying on the trade in which it was being used.
- (2) Subject to the following provisions of this section, the deduction allowable in computing the profits or gains or losses of the trade for the purposes of tax as respects any such payment shall not exceed the commercial rent of the asset for the period for which the payment was made.
- (3) If under subsection (2) above part of a payment which would otherwise be allowable as a deduction is not so allowable, and one or more subsequent payments are made by the same person under the same lease, that part of the first-mentioned payment may be carried forward and treated for the purposes of computing the profits or gains or losses of the trade for the purposes of tax as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.
- (4) For the purposes of subsection (2) above—
- (a) if more than one payment is made for the same period the payments shall be taken together;
  - (b) if the payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;

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- (c) the preceding references to payments include references to parts of payments which under subsection (3) above are treated as if made at a time subsequent to that at which they were made;
- and to the extent that a part of a payment carried forward under subsection (3) above is not allowable as a deduction it may again be carried forward under that subsection.
- (5) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment is made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).
- (6) For the purpose of making a comparison under subsection (2) above between a payment, or payments taken together, and the commercial rent of the asset, “commercial rent” shall mean the rent which might at the relevant time be expected to be paid under a lease of the asset for the remainder of the anticipated normal working life of the asset, being a rent payable at uniform intervals and at a uniform rate which would afford a reasonable return for its market value at the relevant time, having regard to the terms and conditions of the lease; and in this subsection—
- “anticipated normal working life” means, in the case of any asset, the period which might be expected, when the asset is first put into use, to be going to elapse before it is finally put out of use as being unfit for further use, it being assumed that the asset is going to be used in the normal manner and to the normal extent, and is going to be so used throughout that period; and
- “the relevant time” means the time when the lease was created under which the payment was made with which the commercial rent is to be compared.
- (7) If the asset is used at the same time partly for the purposes of the trade and partly for other purposes the commercial rent as defined in subsection (6) above shall be determined by reference to what would be paid for such a partial use of the asset.
- (8) This section shall not apply in relation to payments made under a lease created on or before 14th April 1964.
- (9) In this section references to the person carrying on a trade are references to the person carrying on the trade for the time being, and where at any time a person succeeds to a trade which until that time was carried on by another person, and by virtue of section 113 or 337(1) the trade is to be treated as discontinued, the trade shall, nonetheless, be treated as the same trade for the purposes of this section.
- (10) In this section references to a trade include references to a profession or vocation.

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

- C83** S. 782 excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(5)**
- C84** S. 782 excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 18(2)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**
- C85** S. 782 excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 11(2)**
- C86** S. 782 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 24(2)** (with s. 43)

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### Marginal Citations

M153 Source—1970 s.493; 1971 Sch.8 16(8)

## 783 Leased assets: supplemental.

- <sup>M154</sup>(1) References in section 781 to a sum obtained in respect of the lessee's interest in a lease of an asset, or in respect of any other interest in an asset include—
- (a) in the case of a lessee's interest, references to sums representing the consideration in money or money's worth obtained on a surrender of the rights to the lessor, or on an assignment of the lease, or on creating a sublease or any other interest out of the lease; and
  - (b) references to any insurance moneys payable in respect of the asset, so far as payable to the owner of the interest in the asset.
- (2) Such references also include references to sums representing money or money's worth obtained by the person entitled to the interest by a transaction or series of transactions disposing of the asset, or of an interest in the asset, and in particular transactions which comprise arrangements under which the rights of the lessee under a lease of the asset are merged in any way with the rights of the lessor, or with any other rights as respects the asset, so far as the money or money's worth so obtained is attributable to the rights of the lessee under the lease.
- (3) References in section 781 to sums obtained in respect of any interest in an asset include references to money or money's worth so obtained in any transaction (including a transaction of the kind described in subsection (1) or (2) above) by way of consideration received by a person who is an associate of the person entitled to the interest in the asset.
- (4) If an interest in the asset is disposed of by any person to a person who is his associate, the person disposing of the interest shall (unless in fact he obtains a greater sum) be treated for the purposes of section 781 as having obtained in respect of the interest—
- (a) the value of the interest in the open market; or
  - (b) the value of the interest to the person to whom it is, in effect, transferred;
- whichever is the greater.
- (5) For the purposes of subsections (3) and (4) above a disposition may be direct or indirect and may be effected by any such transaction as is described in subsection (2) above.
- (6) For the purposes of sections 781 and 784 and this section any sum obtained by any persons carrying on a trade, profession or vocation in partnership in respect of an interest in an asset which is and continues to be used for the purposes of the trade, profession or vocation shall be regarded as apportionable between them in the shares in which they are then entitled to the profits of the trade, profession or vocation.
- (7) Subject to subsection (6) above, for those purposes a sum obtained by persons jointly entitled to an interest in an asset shall be apportionable according to their respective interests in the rights.
- (8) For those purposes, any payment in respect of which a deduction is allowable by way of tax relief which is made by persons carrying on a trade, profession or vocation in partnership shall be apportioned in such manner as may be just.



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(9) Where under this section any sum or payment falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more persons, any question which arises as to the manner in which the sum or payment is to be apportioned shall be determined, for the purposes of tax of all those persons—

- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners unless all those persons agree that it shall be determined by the Special Commissioners;
- (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct unless all those persons agree that it shall be determined by the Special Commissioners; and
- (c) in any other case, by the Special Commissioners;

and any such Commissioners shall determine the question in like manner as if it were an appeal, except that all those persons shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.

(10) For the purposes of this section and in construing the expressions “associate” and “associated” in section 781 and this section, the following persons shall be deemed to be associated with each other, that is to say—

- (a) any individual and that individual’s husband or wife, and any relative, or husband or wife of a relative, of that individual or that individual’s husband or wife (“relative” meaning, for this purpose, brother, sister, ancestor or lineal descendant);
- (b) any person in his capacity of trustee of a settlement and any individual who in relation to the settlement is a settlor, and any person associated with that individual (“settlement” and “settlor” having, for this purpose, the meanings given by section 670(2));
- (c) any person and a body of persons of which that person, or persons associated with him, or that person and persons associated with him, has or have control;
- (d) any two or more bodies of persons associated with the same person by virtue of paragraph (c) above;
- (e) in relation to a disposal by joint owners, the joint owners and any person associated with any of them.

(11) In subsection (10) above “body of persons” includes a partnership and “control” has the meaning given by section 840.

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

**C87** S. 783(2) restricted (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 19(2)

**C88** S. 783(4) excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 19(1)(a)(3)

**C89** See—s.756—s.783(11) applied for purposes of Part XVII Ch.IV (controlled foreign companies), s.798(10)—s.783(11) applied for purposes of s.798 (interest on certain overseas loans).

#### Marginal Citations

**M154** Source—1970 s.494



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## 784 Leased assets subject to hire-purchase agreements.

- (1)<sup>M155</sup> In the application of section 781 to a lease which constitutes a hire-purchase agreement, for the reference in subsection (2) of that section to the amount of the capital sum there shall, where that capital sum was obtained in respect of the lessee's interest in the lease constituting the hire-purchase agreement, be substituted references to the amount of the capital sum (adjusted, if necessary, under subsection (5) of that section) after deducting any capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee's interest.
- (2) In subsection (1) above "capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee's interest" means—
- (a) so much of any payment made under the lease by the person obtaining the capital sum (or, where the capital sum was obtained by the personal representatives of a deceased person, so made by that deceased person) as is not a payment in respect of which a deduction is allowable by way of tax relief which is one of the kinds listed in subsection (4) of section 781, plus
  - (b) where the lessee's interest was assigned to the person obtaining the capital sum, any capital payment made by that person as consideration for the assignment.
- (3) If the amount to be deducted in pursuance of subsection (1) above exceeds the amount of the capital sum from which it is to be deducted, no charge shall arise under section 781(1) in respect of the capital sum.
- (4) If the capital sum represents the consideration for part only of the lessee's interest in the lease which constitutes a hire-purchase agreement, the amount to be deducted under subsection (1) above shall be such proportion of the capital expenditure which is still unallowed as is reasonable having regard to the degree to which the capital expenditure has contributed to the value of what is disposed of in return for the capital sum.
- (5) If more than one capital sum is, or is to be regarded as, obtained by the same person in respect of the lessee's interest in the lease which constitutes a hire-purchase agreement, then, so far as in respect of one of those capital sums any deduction is made in respect of capital expenditure in pursuance of subsection (1) above that capital expenditure shall be left out of account in applying subsections (1) and (3) above to any other such capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.
- (6)<sup>M156</sup> In this section—
- "hire-purchase agreement" means an agreement, other than a conditional sale agreement, under which—
- (a) goods are bailed or, in Scotland, hired in return for periodical payments by the person to whom they are bailed or hired, and
  - (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—
    - (i) the exercise of an option to purchase by that person;
    - (ii) the doing of any other specified act by any party to the agreement;
    - (iii) the happening of any other specified event; and
- "conditional sale agreement" means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the

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goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

#### Marginal Citations

**M155** Source—1970 s.495

**M156** Source—Consumer Credit Act 1974 Sch.4 29

### 785 Meaning of “asset”, “capital sum” and “lease” for purposes of sections 781 to 784.

In sections 781 to 784—

“asset” means any description of property or rights other than land or an interest in land;

“capital sum” means any sum of money, or any money’s worth, except so far as it or any part of it is to be treated for the purposes of tax as a receipt to be taken into account in computing the profits or gains or losses of a trade, profession or vocation, or profits or gains or losses arising from woodlands, or is, apart from section 781, chargeable under Case VI of Schedule D; and

“lease”, in relation to an asset, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset, and includes, in particular, any agreement or arrangement all or any of the payments under which represent instalments of, or payments towards, a purchase price.

VALID FROM 19/07/2006

#### <sup>F102</sup> 785ZA Restrictions on use of losses: leasing partnerships

- (1) This section applies for corporation tax purposes if—
  - (a) a company carries on a business in respect of which the company is within the charge to corporation tax,
  - (b) the company carries on the business in partnership with other persons in an accounting period of the partnership,
  - (c) the business (“the leasing business”) is, on any day in that period, a business of leasing plant or machinery,
  - (d) the company incurs a loss in its notional business in any accounting period comprised (wholly or partly) in the accounting period of the partnership, and
  - (e) the interest of the company in the leasing business during the accounting period of the partnership is not determined on an allowable basis (see subsections (2) to (4)).
- (2) The interest of the company in the leasing business during the accounting period of the partnership is determined on an allowable basis if (and only if) the following condition is met.
- (3) The condition is met if, for the purposes of section 114(2),—
  - (a) the company's share in the profits or loss of the leasing business for that period is determined wholly by reference to a single percentage, and

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- (b) the company's share in any relevant capital allowances for that period is determined wholly by reference to the same percentage.
- (4) For the purposes of this condition “profits” does not include chargeable gains.
- (5) The following restrictions apply in respect of so much of the loss incurred by the company in its notional business as derives from any relevant capital allowances (“the restricted part of the loss”).
- (6) Apart from by way of set off against any relevant leasing income, relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss.
- (7) If the leasing business is a trade, relief is not to be given to the company under section 393A(1) in respect of the restricted part of the loss.
- (8) The restricted part of the loss is not available for set off by way of group relief in accordance with section 403.
- (9) For the purpose of determining how much of a loss derives from any relevant capital allowances, the loss is to be calculated on the basis that any relevant capital allowances are the final amounts to be deducted.]

#### Textual Amendments

**F102** Ss. 785ZA, 785ZB inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), s. 83(2)

VALID FROM 19/07/2006

#### **F102** ~~785ZB~~ **Section 785ZA: definitions**

- (1) This section applies for the purposes of section 785ZA.
- (2) “Business of leasing plant or machinery” has the same meaning as in Part 3 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc).
- (3) “Lease” has the same meaning as in section 785A.
- (4) “Notional business”, in relation to a company, means the business—
  - (a) from which the company's share in the profits or loss of the leasing business is treated under section 114(2) as deriving for the purposes of the charge to corporation tax, and
  - (b) which is treated under that provision as carried on alone by the company for those purposes.
- (5) “Plant or machinery” has the same meaning as in Part 2 of the Capital Allowances Act.
- (6) “Relevant capital allowance” means an allowance under Part 2 of the Capital Allowances Act in respect of expenditure incurred on the provision of plant or machinery wholly or partly for the purposes of the leasing business.

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- (7) “Relevant leasing income” means any income of the company's notional business deriving from any lease—
- (a) which is a lease of plant or machinery, and
  - (b) which was entered into before the end of the accounting period of the company in which the loss in its notional business was incurred.
- (8) “Relevant loss relief provision” means any of the following provisions—
- (a) section 392A (Schedule A losses),
  - (b) section 392B (losses from overseas property businesses),
  - (c) section 393 (trade losses),
  - (d) section 396 (Case VI losses).]

### Textual Amendments

**F102** Ss. 785ZA, 785ZB inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), s. 83(2)

VALID FROM 22/07/2004

### [<sup>F103</sup>785A] Rent factoring of leases of plant or machinery

- (1) This section applies in any case where the following conditions are satisfied—
- (a) a person (call him “P”) is entitled to receive rentals under a lease of plant or machinery,
  - (b) the rentals, so far as receivable by him, fall to be brought into account as income for the purpose of calculating his tax liability,
  - (c) P enters into arrangements for the transfer of his right to receive some or all of the rentals to another person,
  - (d) apart from this section, some or all of the amount or value of the consideration for the transfer (“the relevant portion of the consideration”) would fall to be brought into account neither—
    - (i) as income, nor
    - (ii) as a capital allowances disposal receipt,
 for the purpose of calculating P’s tax liability.
- (2) In any such case, the relevant portion of the consideration—
- (a) shall be treated for tax purposes as income of P,
  - (b) shall be taxable as rentals receivable by P under the lease (apart from any transfer of his right to receive some or all of the rentals), and
  - (c) shall be brought into account in a period of account to the extent that it is receivable in that period of account.
- (3) Any reference to the transfer from P to another person of a right to receive rentals includes a reference to any arrangement under which rental ceases to form part of the receipts taken into account as income for the purposes of calculating P’s tax liability.

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- (4) Where P is a partnership, any reference in this section to calculating P's tax liability includes a reference to calculating the tax liability of the partners, notwithstanding that the partnership has legal personality.
- (5) A partnership has legal personality for the purposes of subsection (4) above if it is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.
- (6) In this section—
- “capital allowances disposal receipt” means a disposal receipt within the meaning of Part 2 of the Capital Allowances Act 2001 (see section 60 of that Act);
- “lease” includes an underlease, sublease, tenancy or licence and an agreement for any of those things;
- “tax liability” means liability to income tax or corporation tax.]

#### Textual Amendments

**F103** S. 785A inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 2004 (c. 12), s. 135(1)

VALID FROM 21/07/2008

#### [<sup>F104</sup>785B] Plant and machinery leases: capital receipts to be treated as income

- (1) This section applies if—
- there is an unconditional obligation, under a lease of plant or machinery or a relevant arrangement, to make a relevant capital payment (at any time), or
  - a relevant capital payment is made under such a lease or arrangement otherwise than in pursuance of such an obligation.
- (2) The lessor is treated for corporation tax purposes as receiving income attributable to the lease of an amount equal to the amount of the capital payment.
- (3) The income is treated—
- if subsection (1)(a) applies, as income for the period of account in which there is first an obligation of the kind mentioned there, and
  - if subsection (1)(b) applies, as income for the period of account in which the payment is made.]

#### Textual Amendments

**F104** Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

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VALID FROM 21/07/2008

**[<sup>F104</sup>785] Section 785B: interpretation**

- (1) The expressions used in section 785B and this section are to be interpreted as follows.
- (2) “Capital payment” means any payment except one which, if made to the lessor—
  - (a) would fall to be included in a calculation of the lessor's income for corporation tax purposes, or
  - (b) would fall to be included in such a calculation but for section 502B (rental earnings under long funding finance lease).
- (3) “Lease” includes—
  - (a) a licence, and
  - (b) the letting of a ship or aircraft on charter or the letting of any other asset on hire,and “lessor” and “lessee” are to be read accordingly.
- (4) “Lease of plant or machinery” includes a lease of plant or machinery and other property but does not include—
  - (a) a lease where the income attributable to the lease received by the lessor (if any) would be chargeable to tax under Schedule A, or
  - (b) a lease of plant or machinery where the lessor has incurred what would (but for section 34A of the Capital Allowances Act) be qualifying expenditure (within the meaning of Part 2 of that Act) on the plant or machinery.
- (5) “Relevant arrangement” means any agreement or arrangement relating to a lease of plant or machinery, including one made before the lease is entered into or after it has ended (and, accordingly, “lessor” and lessee” include prospective and former lessors and lessees).
- (6) A capital payment, in relation to a lease or relevant arrangement, is “relevant” if condition A or B is met (but this is subject to subsection (9)).
- (7) Condition A is that the capital payment is payable (or paid), directly or indirectly, by (or on behalf of) the lessee to (or on behalf of) the lessor in connection with—
  - (a) the grant, assignment, novation or termination of the lease, or
  - (b) any provision of the lease or relevant arrangement (including the variation or waiver of any such provision).
- (8) Condition B is that rentals payable under the lease are less than (or payable later than) they might reasonably be expected to be if there were no obligation to make the capital payment (and the capital payment were not made).
- (9) A capital payment is not “relevant” if or to the extent that—
  - (a) the capital payment reduces (or would but for section 536 of the Capital Allowances Act reduce) the amount of expenditure incurred by the lessor for the purposes of the Capital Allowances Act in respect of the plant or machinery in question,
  - (b) the capital payment is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question, or

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- (c) the capital payment would fall (or falls) to be brought into account by the lessor as a disposal receipt within the meaning of Part 2 of the Capital Allowances Act (see section 60(1) of that Act).
- (10) References to payment include the provision of value by any means other than the making of a payment, and accordingly—
- (a) references to the making of a payment include the passing of value (by any other means), and
  - (b) references to the amount of the payment include the value passed.]

#### Textual Amendments

**F104** Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

VALID FROM 21/07/2008

#### **[<sup>F104</sup>785B] Section 785B: lease of plant and machinery and other property**

- (1) This section applies if section 785B applies in relation to a lease of plant or machinery and other property (see section 785C(4)).
- (2) The relevant capital payment is to be apportioned, on a just and reasonable basis, between—
  - (a) the plant and machinery, and
  - (b) the other property.
- (3) If the income (if any) received by the lessor that is attributable to any of the plant or machinery is chargeable to tax under Schedule A, treat that plant or machinery as falling within subsection (2)(b) (and not subsection (2)(a)).
- (4) Section 785B(2) has effect as if the reference to the amount of the capital payment were to such amount as is apportioned under subsection (2) in respect of the plant or machinery within subsection (2)(a).]

#### Textual Amendments

**F104** Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

VALID FROM 21/07/2008

#### **[<sup>F104</sup>785E] Section 785B: expectation that relevant capital payment will not be paid**

- (1) This section applies for corporation tax purposes if—
  - (a) section 785B applies by virtue of subsection (1)(a) of that section, and
  - (b) at any time, the lessor reasonably expects that the relevant capital payment will not be paid (or will not be paid in full).



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- (2) For the purposes of calculating the profits of the lessor, a deduction is allowed for the period of account which includes that time.
- (3) The amount of the deduction is equal to the amount reasonably expected not to be paid.
- (4) No other deduction is allowed in respect of the matters mentioned in subsection (1).]

#### Textual Amendments

**F104** Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

### 786 Transactions associated with loans or credit.

- <sup>M157</sup>(1) This section applies as respects any transaction effected with reference to the lending of money or the giving of credit, or the varying of the terms on which money is lent or credit is given, or which is effected with a view to enabling or facilitating any such arrangement concerning the lending of money or the giving of credit.
- (2) Subsection (1) above has effect whether the transaction is effected between the lender or creditor and the borrower or debtor, or between either of them and a person connected with the other or between a person connected with one and a person connected with the other.
  - (3) If the transaction provides for the payment of any annuity or other annual payment, not being interest, being a payment chargeable to tax under Case III of Schedule D, the payment shall be treated for all the purposes of the Tax Acts as if it were a payment of annual interest.
  - (4) If the transaction is one by which the owner of any securities or other property carrying a right to income (“the owner”) agrees to sell or transfer the property (“the relevant property”), and by the same or any collateral agreement—
    - (a) the purchaser or transferee (“the buyer”), or a person connected with him, agrees that at a later date he will sell or transfer the same or any other property to the owner or a person connected with him; or
    - (b) the owner or a person connected with him acquires an option which he subsequently exercises, to buy or acquire the same or any other property from the buyer or a person connected with the buyer;
 then, without prejudice to the liability of any other person, the owner shall be chargeable to tax under Case VI of Schedule D on an amount equal to any income which arises from the relevant property at any time before the repayment of the loan or the termination of the credit.
  - (5) If under the transaction a person assigns, surrenders or otherwise agrees to waive or forego income arising from any property (without a sale or transfer of the property) then, without prejudice to the liability of any other person, he shall be chargeable to tax under Case VI of Schedule D on a sum equal to the amount of income assigned, surrendered, waived or foregone.
  - (6) If credit is given for the purchase price of any property, and the rights attaching to the property are such that, during the subsistence of the debt, the purchaser’s rights



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to income from the property are suspended or restricted, he shall be treated for the purposes of subsection (5) above as if he had surrendered a right to income of an amount equivalent to the income which he has in effect foregone by obtaining the credit.

- (7) The amount of any income payable subject to deduction of income tax shall be taken for the purposes of subsection (5) above as the amount before deduction of tax.
- (8) References in this section to connected persons shall be construed in accordance with section 839.

#### **Marginal Citations**

**M157** Source—1970 s.496

### **787 Restriction of relief for payments of interest.**

- <sup>M158</sup>(1) Relief shall not be given to any person under any provision of the Tax Acts in respect of any payment of interest if a scheme has been effected or arrangements have been made (whether before or after the time when the payment is made) such that the sole or main benefit that might be expected to accrue to that person from the transaction under which the interest is paid was the obtaining of a reduction in tax liability by means of any such relief.
- (2) In this section “relief” means relief by way of deduction in computing profits or gains or deduction or set off against income or total profits.
- (3) Where the relief is claimed by virtue of section 403(7) any question under this section as to what benefit might be expected to accrue from the transaction in question shall be determined by reference to the claimant company and the surrendering company taken together.

#### **Marginal Citations**

**M158** Source—1976 s.38

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