



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XVIII

#### DOUBLE TAXATION RELIEF

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

- C1** Pt. 18 modified (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 20 para. 10](#) (as amended by [Finance Act 1995 \(c. 4\)](#), [s. 122\(4\)\(5\)](#)) (with [Sch. 20 para. 12\(2\)\(a\)](#))
- C2** Pt. 18 applied (with effect in accordance with [Sch. 29 Pt. 14](#) of the affecting Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 29 para. 87](#)
- C3** Pt. 18 modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 107\(5\)](#)
- C4** Pt. 18 applied by [Finance Act 1996 \(c. 8\)](#), [Sch. 9 para. 12E\(5\)](#) (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(1) of the amending S.I. (as amended by [S.I. 2008/1579](#), [reg. 4\(1\)](#))) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), [Sch. 1 para. 16](#))
- C5** Pt. 18 applied by [Finance Act 2002 \(c. 23\)](#), [Sch. 26 para. 30E\(5\)](#) (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(1) of the amending S.I. (as amended by [S.I. 2008/1579](#), [reg. 4\(1\)](#))) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), [Sch. 1 para. 19](#))
- C6** Pt. 18 applied by [Finance Act 1996 \(c. 8\)](#), [Sch. 9 para. 12C\(3\)](#) (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), [Sch. 2 para. 8](#))
- C7** Pt. 18 applied by [Finance Act 2002 \(c. 23\)](#), [Sch. 26 para. 30C\(3\)](#) (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), [Sch. 2 para. 10](#))
- C8** Pt. 18 applied by [Finance Act 2002 \(c. 23\)](#), [Sch. 29 para. 87A\(3\)](#) (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), [Sch. 2 para. 12](#))
- C9** Pt. 18 applied by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), [ss. 140H\(3\)](#), [140I\(3\)](#), [140J\(3\)](#) (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by [S.I. 2008/1579](#), [reg. 4\(2\)](#))) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), [Sch. 3 para. 1](#))

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- C10** Pt. 18 applied by Finance Act 1996 (c. 8), Sch. 9 paras. 12H(3), **12I(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 2**)
- C11** Pt. 18 applied by Finance Act 2002 (c. 23), Sch. 26 paras. 30G(3), **30H(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 4**)
- C12** Pt. 18 applied by Finance Act 2002 (c. 23), Sch. 29 paras. 85B(3), **85C(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 5**)
- C13** Pt. 18: power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 533(2)(3)** (with Sch. 2 Pts. 1, 2)
- C14** Pt. 18 modified (with effect in accordance with s. 56(3) of the modifying Act) by Finance Act 2009 (c. 10), **s. 56(1)**)

## <sup>F1</sup>CHAPTER I

### THE PRINCIPAL RELIEFS

#### Textual Amendments

- F1** Pt. 18 Chs. 1, 2 modified (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. 277(1), 289** (with ss. 60, 101(1), 171, 201(3))

#### **788 Relief by agreement with other [<sup>F2</sup>territories].**

<sup>M1</sup>(1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been [<sup>F3</sup>made in relation to any territory] outside the United Kingdom with a view to affording relief from double taxation in relation to—

- (a) income tax,
- (b) corporation tax in respect of income or chargeable gains, and
- (c) any taxes of a similar character to those taxes imposed by the laws of that territory,

and that it is expedient that those arrangements should have effect, then those arrangements shall have effect in accordance with subsection (3) below.

(2) <sup>F4</sup>.....

(3) Subject to the provisions of this Part, the arrangements shall, notwithstanding anything in any enactment, have effect in relation to income tax and corporation tax in so far as they provide—

- (a) for relief from income tax, or from corporation tax in respect of income or chargeable gains; or
- (b) for charging the income arising from sources, or chargeable gains accruing on the disposal of assets, in the United Kingdom to persons not resident in the United Kingdom; or
- (c) for determining the income or chargeable gains to be attributed—

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- (i) to persons not resident in the United Kingdom and their agencies, branches or establishments in the United Kingdom; or
  - (ii) to persons resident in the United Kingdom who have special relationships with persons not so resident; or
  - (d) for conferring on persons not resident in the United Kingdom the right to a tax credit under [<sup>F5</sup>section 397(1) of ITTOIA 2005] in respect of qualifying distributions made to them by companies which are so resident.
- (4) The provisions of Chapter II of this Part shall apply where arrangements which have effect by virtue of this section provide that tax payable under the laws of the territory concerned shall be allowed as a credit against tax payable in the United Kingdom.
- (5) For the purposes of this section and, subject to section 795(3), Chapter II of this Part in its application to relief under this section, any amount of tax which would have been payable under the law of a territory outside the United Kingdom but for a relief to which this subsection applies given under the law of that territory shall be treated as having been payable; and references in this section and that Chapter to double taxation, to tax payable or chargeable, or to tax not chargeable directly or by deduction shall be construed accordingly.

This subsection applies—

- (a) to any relief given with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, being a relief with respect to which provision is made in the arrangements in question for double taxation relief; <sup>F6</sup> . . .
- (b) <sup>F6</sup> . . . . .

[<sup>F7</sup>Relief does not fall to be given in accordance with section 801 by virtue of this subsection unless the arrangements in question make express provision for such relief (but this paragraph is without prejudice to section 790(10B)).]

- (6) Except in the case of a claim for an allowance by way of credit in accordance with Chapter II of this Part, a claim for relief under subsection (3)(a) above shall be made to the Board.
- (7) Where—
- (a) under any arrangements which have effect by virtue of this section, relief may be given, either in the United Kingdom or in the territory [<sup>F8</sup>in relation to] which the arrangements are made, in respect of any income or chargeable gains, and
  - (b) it appears that the assessment to income tax or corporation tax made in respect of the income or chargeable gains is not made in respect of the full amount thereof, or is incorrect having regard to the credit, if any, which falls to be given under the arrangements,
- any such assessments may be made as are necessary to ensure that the total amount of the income or chargeable gains is assessed, and the proper credit, if any, is given in respect thereof, and, where the income is, or the chargeable gains are, entrusted to any person in the United Kingdom for payment, any such assessment may be made on the recipient of the income or gains <sup>F9</sup> . . . .
- (8) Any arrangements to which effect is given under this section may include provision for relief from tax for periods before the passing of this Act, or before the making of the arrangements, and provisions as to income or chargeable gains which is or are

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not subject to double taxation, and the preceding provisions of this section shall have effect accordingly.

(9) Any Order in Council made under this section revoking an earlier such Order in Council may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.

[<sup>F10</sup>(10) An Order under this section is not to be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.]

#### Textual Amendments

- F2** Word in s. 788 sidenote substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 88\(2\)\(b\)](#)
- F3** Words in s. 788(1) substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 88\(1\)](#)
- F4** [S. 788\(2\)](#) repealed (19.7.2006) by [Finance Act 2006 \(c. 25\), Sch. 26 Pt. 8\(2\)](#)
- F5** Words in s. 788(3)(d) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 321\(2\)](#) (with [Sch. 2](#))
- F6** Words in s. 788(5) repealed (1.4.2000) by [Finance Act 2000 \(c. 17\), Sch. 30 para. 1, Sch. 40 Pt. 2\(13\)](#), Note
- F7** Words in s. 788(5) inserted (with effect in accordance with [Sch. 30 para. 2\(2\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 30 para. 2\(1\)](#)
- F8** Words in s. 788(7)(a) substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 88\(2\)\(a\)](#)
- F9** Words in s. 788(7) repealed (1.4.2009 with effect in accordance with s. 1329(1) of the repealing Act) by [Corporation Tax Act 2009 \(c. 4\), Sch. 1 para. 243, Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F10** [S. 788\(10\)](#) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 176](#)

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

- C15** *See—1970 ss.267, 273, 273A and 276 (groups)—disapplication of those provisions in the case of companies treated as resident outside the U.K. by virtue of s.788. 1989 s.115—calculation of tax credit for non-resident on gross amount of distribution. 1990 s.32(8)—application of s.788 to assets held by employee share ownership trusts.*  
[S. 788](#) modified (27.7.1993) by [1993 c. 34, s. 194\(1\)](#)
- C16** [S. 788](#) restricted (28.7.2000) by [Finance Act 2000 \(c. 17\), Sch. 22 para. 57](#)

#### Marginal Citations

- M1** Source—1970 s.497(1)-(8); 1972 ss.98(2), 100(1); 1976 s.50(2); 1987 s.70(1)

## 789 Arrangements made under old law.

<sup>M2</sup>(1) Notwithstanding section 793(2), any arrangements made in relation to the profits tax under section 347 of the <sup>M3</sup>Income Tax Act 1952 or any earlier enactment corresponding to that section shall, except in so far as arrangements made after the passing of the <sup>M4</sup>Finance Act 1965 provide otherwise, have effect in relation to corporation tax and income and gains chargeable to corporation tax as they are expressed to have effect in relation to the profits tax and profits chargeable to the profits tax, with the substitution of accounting periods for chargeable accounting periods (and not as they had effect in relation to income tax).

(2) <sup>F11</sup> .....

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- (3) Any reference in the Tax Acts (including this Part) to arrangements under or by virtue of section 788 includes a reference to arrangements having effect by virtue of this section.

#### Textual Amendments

- F11** S. 789(2) omitted (with effect in accordance with Sch. 1 para. 65 of the repealing Act) by virtue of Finance Act 2008 (c. 9), **Sch. 1 para. 46**

#### Marginal Citations

- M2** Source—1970 s.497(9), (10); 1971 sch.6 74; 1972 s.100(1)  
**M3** 1952 c.10.  
**M4** 1965 c. 25.

## 790 Unilateral relief.

- (1) <sup>M5</sup>To the extent appearing from the following provisions of this section, relief from income tax and corporation tax in respect of income and chargeable gains shall be given in respect of tax payable under the law of any territory outside the United Kingdom by allowing that tax as a credit against income tax or corporation tax, notwithstanding that there are not for the time being in force any arrangements under section 788 providing for such relief.
- (2) Relief under subsection (1) above is referred to in this Part as “unilateral relief”.
- (3) <sup>M6</sup>Unilateral relief shall be such relief as would fall to be given under Chapter II of this Part if arrangements [<sup>F12</sup>in relation to] the territory in question containing the provisions specified in subsections (4) to [<sup>F13</sup>(10C)] below were in force by virtue of section 788, but subject to any particular provision made with respect to unilateral relief in that Chapter; and any expression in that Chapter which imports a reference to relief under arrangements for the time being having effect by virtue of that section shall be deemed to import also a reference to unilateral relief.
- (4) <sup>M7</sup>Credit for tax paid under the law of the territory outside the United Kingdom and computed by reference to income arising or any chargeable gain accruing in that territory shall be allowed against any United Kingdom income tax or corporation tax computed by reference to that income or gain (profits from, or remuneration for, personal or professional services performed in that territory being deemed for this purpose to be income arising in that territory).
- (5) Subsection (4) above shall have effect subject to the following modifications, that is to say—
- where the territory is the Isle of Man or any of the Channel Islands, the limitation to income or gains arising in the territory shall not apply;
  - where arrangements [<sup>F12</sup>in relation to] the territory are for the time being in force by virtue of section 788, credit for tax paid under the law of the territory shall not be allowed by virtue of subsection (4) above in the case of any income or gains if any credit for that tax is allowable under those arrangements in respect of that income or those gains; and
  - credit shall not be allowed by virtue of subsection (4) above for overseas tax on a dividend paid by a company resident in the territory unless—

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- (i) the overseas tax is directly charged on the dividend, whether by charge to tax, deduction of tax at source or otherwise, and the whole of it represents tax which neither the company nor the recipient would have borne if the dividend had not been paid; or
  - (ii) the dividend is paid to a company within subsection (6) below; or
  - (iii) the dividend is paid to a company to which section 802(1) applies and is a dividend of the kind described in that subsection.
- (6) <sup>M8</sup>Where a dividend paid by a company resident in the territory is paid to a [<sup>F14</sup>company falling within subsection (6A) below] which either directly or indirectly controls, or is a subsidiary of a company which directly or indirectly controls—
- (a) not less than 10 per cent. of the voting power in the company paying the dividend; or
  - (b) less than 10 per cent. of the voting power in the company paying the dividend if—
    - (i) it has been reduced below that percentage on or after 1st April 1972; or
    - (ii) it has been acquired on or after that date in exchange for voting power in another company in respect of which relief under this subsection by virtue of paragraph (a) above was due prior to the exchange;
 and the company receiving the dividend shows that the conditions specified in subsection (7) below are satisfied;
- any tax in respect of its profits paid under the law of the territory by the company paying the dividend shall be taken into account in considering whether any, and if so what, credit is to be allowed in respect of the dividend.
- In this subsection references to one company being a subsidiary of another are to be construed in accordance with section 792(2).
- [<sup>F15</sup>(6A) A company falls within this subsection if—
- (a) it is resident in the United Kingdom; or
  - (b) it is resident outside the United Kingdom but the dividend mentioned in subsection (6) above forms part of the profits of a [<sup>F16</sup>permanent establishment] of the company's in the United Kingdom.]
- (7) The conditions referred to in subsection (6)(b) above are as follows—
- (a) that the reduction below the 10 per cent. limit (and any further reduction) or, as the case may be, the exchange (and any reduction thereafter) could not have been prevented by any reasonable endeavours on the part of the company receiving the dividend and was due to a cause or causes not reasonably foreseeable by it when control of the relevant voting power was acquired; and
  - (b) no reasonable endeavours on the part of that company could have restored or, as the case may be, increased the voting power to not less than 10 per cent.
- (8) In subsection (7) above references to the company receiving the dividend include references—
- (a) to any company of which it is a subsidiary within the meaning of section 792(2); and
  - (b) where prior to the reduction or exchange the voting power in question was controlled otherwise than directly by the company receiving the dividend, to each other company relevant for determining whether that voting power was controlled as required by subsection (6)(a) above.

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- (9) In subsection (7) above “the relevant voting power” means the voting power by virtue of which relief was due under subsection (6)(a) above prior to the reduction or exchange or, where control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.
- (10) In any case in which relief in respect of a dividend is due by virtue of subsection (6)(b) above, there shall be taken into account, as if it were tax payable under the law of the territory in which the company paying the dividend is resident, any tax that would be so taken into account under section 801 if the company paying the dividend and the company receiving it were related to each other within the meaning of section 801(5).
- [<sup>F17</sup>(10A) In any case where—
- (a) under the law of the territory outside the United Kingdom, an amount of tax (“the spared tax”) would, but for a relief, have been payable by a company resident in that territory (“company A”) in respect of any of its profits,
  - (b) company A pays a dividend out of those profits to another company resident in that territory (“company B”),
  - (c) company B, out of profits which consist of or include the whole or part of that dividend, pays a dividend to a company resident in the United Kingdom (“company C”), and
  - (d) the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, under arrangements made [<sup>F12</sup>in relation to] the territory outside the United Kingdom and having effect by virtue of section 788, to a relief to which subsection (5) of that section applies in respect of the spared tax,
- subsection (10B) below shall apply.
- (10B) In any case falling within subsection (10A) above, the spared tax shall be taken into account for the purposes of—
- (a) the other provisions of this section, and
  - (b) subject to section 795(3), Chapter II of this Part in its application to relief under this section in relation to the dividend paid to company C,
- as if it had been payable and paid; and references in this section and that Chapter to double taxation, to tax payable or chargeable, or to tax not chargeable directly or by deduction shall be construed accordingly.
- (10C) Except as provided by subsection (10B) above, in relation to any dividend paid—
- (a) to a company resident in the United Kingdom,
  - (b) by a company resident in the territory outside the United Kingdom,
- credit by virtue of section 801 does not fall to be given by virtue of this section in respect of tax which would have been payable under the law of that or any other territory outside the United Kingdom but for a relief (notwithstanding any arrangements made [<sup>F12</sup>in relation to] that or any other territory outside the United Kingdom which have effect by virtue of section 788 and provide for a relief to which subsection (5) of that section applies).]
- (11) <sup>M9</sup>Where—
- (a) unilateral relief may be given in respect of any income or chargeable gain, and
  - (b) it appears that the assessment to income tax or corporation tax made in respect of the income or chargeable gain is not made in respect of the full amount



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thereof, or is incorrect having regard to the credit, if any, which falls to be given by way of unilateral relief,

any such assessments may be made as are necessary to ensure that the total amount of the income or chargeable gain is assessed, and the proper credit, if any, is given in respect thereof, and, where the income is, or the chargeable gain is, entrusted to any person in the United Kingdom for payment, any such assessment may be made on the recipient of the income or gain<sup>F18</sup> . . . .

- (12) In this section and in Chapter II of this Part in its application to unilateral relief, references to tax payable or paid under the law of a territory outside the United Kingdom include only references—
- (a) to taxes which are charged on income and which correspond to United Kingdom income tax, and
  - (b) to taxes which are charged on income or chargeable gains and which correspond to United Kingdom corporation tax;

but for this purpose tax under the law of any such territory shall not be treated as not corresponding to income tax or corporation tax by reason only that it is payable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

#### Textual Amendments

- F12** Words in s. 790(3)(5)(b)(10A)(d)(10C) substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **s. 88(2)(a)**
- F13** Words in s. 790(3) substituted (with effect in accordance with [Sch. 30 para. 3\(4\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 30 para. 3(2)**
- F14** Words in s. 790(6) substituted (with effect in accordance with [Sch. 30 para. 4\(14\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 30 para. 4(2)**
- F15** [S. 790\(6A\)](#) inserted (with effect in accordance with [Sch. 30 para. 4\(14\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 30 para. 4(3)**
- F16** Words in s. 790(6A)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **s. 153(1)(a)**
- F17** [S. 790\(10A\)-\(10C\)](#) inserted (with effect in accordance with [Sch. 30 para. 3\(4\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 30 para. 3(3)**
- F18** Words in s. 790(11) repealed (1.4.2009 with effect in accordance with s. 1329(1) of the repealing Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [Sch. 1 para. 244](#), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

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

- C17** [S. 790](#) restricted (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), **Sch. 22 para. 57**

#### Marginal Citations

- M5** Source—1970 s.498(1); 1972 s.100(1)
- M6** Source—1970 s.498(2)
- M7** Source—1970 s.498(3); 1972 s.100(1)
- M8** Source—1970 s.498(4); 1971 s.26(3); 1972 s.83(1)-(5)
- M9** Source—1970 s.498(5), (6); 1972 s.100(1)



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## 791 Power to make regulations for carrying out section 788.

<sup>M10</sup>The Board may from time to time make regulations generally for carrying out the provisions of section 788 or any arrangements having effect thereunder, and may in particular by those regulations provide—

- (a) for securing that relief from taxation imposed by the laws of the territory to which any such arrangements relate does not enure for the benefit of persons not entitled to such relief; and
- (b) for authorising, in cases where tax deductible from any payment has, in order to comply with any such arrangements, not been deducted, and it is discovered that the arrangements did not apply to that payment, the recovery of the tax by assessment on the person entitled to the payment or by deduction from subsequent payments.

### Modifications etc. (not altering text)

**C18** For regulations see Part III Vol.5

### Marginal Citations

**M10** Source—1970 s.517

## CHAPTER II

### RULES GOVERNING RELIEF BY WAY OF CREDIT

### Modifications etc. (not altering text)

**C19** Pt. 18 Chs. 1, 2 modified (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. 277(1), 289 (with ss. 60, 101(1), 171, 201(3))

### General

## 792 Interpretation of credit code.

<sup>M11</sup>(1) In this Chapter, except where the context otherwise requires—

“arrangements” means any arrangements having effect by virtue of section 788;

“foreign tax” means, in relation to any territory, arrangements [<sup>F19</sup>in relation to] which have effect by virtue of section 788, any tax chargeable under the laws of that territory for which credit may be allowed under the arrangements [<sup>F20</sup>(other than special withholding tax within the meaning of Chapter 7 of Part 3 of the Finance Act 2004)];

“the United Kingdom taxes” means income tax and corporation tax;

“underlying tax” means, in relation to any dividend, tax which is not chargeable in respect of that dividend directly or by deduction; and

“unilateral relief” means relief under section 790.

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- (2) For the purposes of this Chapter one company is a subsidiary of another if the other company controls, directly or indirectly, not less than 50 per cent. of the voting power in the first company.
- (3) Any reference in this Chapter to foreign tax shall be construed in relation to credit to be allowed under any arrangements as a reference only to tax chargeable under the laws of the territory [<sup>F19</sup>in relation to] which the arrangements were made.

#### Textual Amendments

- F19** Words in s. 792(1)(3) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), s. 88(2)(a)
- F20** S. 792(1): words in definition of "foreign tax" inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 115(1)

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

- C20** S. 792 applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), reg. 4

#### Marginal Citations

- M11** Source—1970 s.500

### 793 Reduction of United Kingdom taxes by amount of credit due.

- <sup>M12</sup>(1) Subject to the provisions of this Chapter, where under any arrangements credit is to be allowed against any of the United Kingdom taxes chargeable in respect of any income or chargeable gain, the amount of the United Kingdom taxes so chargeable shall be reduced by the amount of the credit.
- (2) Nothing in subsection (1) above authorises the allowance of credit against any United Kingdom tax against which credit is not allowable under the arrangements.
- [<sup>F21</sup>(3) Credit against income tax is given effect at Step 6 of the calculation in section 23 of ITA 2007.]

#### Textual Amendments

- F21** S. 793(3) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 192 (with Sch. 2)

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

- C21** Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), reg. 4

#### Marginal Citations

- M12** Source—1970 s.501; 1972 s.100 (1).

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## [<sup>F22</sup>793A No double relief etc.

- (1) Where relief in respect of an amount of tax that would otherwise be payable under the law of a territory outside the United Kingdom may be allowed—
  - (a) under arrangements made [<sup>F23</sup>in relation to] that territory, or
  - (b) under the law of that territory in consequence of any such arrangements,credit may not be allowed in respect of that tax, whether the relief has been used or not.
- (2) Where, under arrangements having effect by virtue of section 788, credit may be allowed in respect of an amount of tax, credit by way of unilateral relief may not be allowed in respect of that tax.
- (3) Where arrangements made [<sup>F23</sup>in relation to] a territory outside the United Kingdom contain express provision to the effect that relief by way of credit shall not be given under the arrangements in cases or circumstances specified or described in the arrangements, then neither shall credit by way of unilateral relief be allowed in those cases or circumstances.]

### Textual Amendments

- F22** S. 793A inserted (with effect in accordance with Sch. 30 para. 5(2)(3) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 5(1)
- F23** Words in s. 793A(1)(a)(3) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), s. 88(2)(a)

### Modifications etc. (not altering text)

- C22** Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), reg. 4

## 794 Requirement as to residence.

- <sup>M13</sup>(1) Subject to subsection (2) below, credit shall not be allowed under any arrangements against any of the United Kingdom taxes for any chargeable period unless the person in respect of whose income or chargeable gains the United Kingdom tax is chargeable is resident in the United Kingdom for that period.
- (2) Credit may be allowed by way of unilateral relief—
- (a) for tax paid under the law of the Isle of Man or any of the Channel Islands, if the person in question is, for the chargeable period in question, resident either in the United Kingdom or in the Isle of Man or any of the Channel Islands, as the case may be;
  - (b) for tax paid under the law of any territory and computed by reference to income from an office or employment the duties of which are performed wholly or mainly in that territory, against [<sup>F24</sup>income tax on employment income] and computed by reference to that income, if the person in question is for the year of assessment in question resident either in the United Kingdom or that territory; and
- [<sup>F25</sup>(bb) for tax paid under the law of any territory outside the United Kingdom in respect of the income or chargeable gains of a branch or agency in the United Kingdom of a person who is not resident in the United Kingdom, where the following conditions are fulfilled, namely—

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- (i) that the territory under whose law the tax was paid is not one in which the person is liable to tax by reason of domicile, residence or place of management; and
- (ii) that the amount of relief claimed does not exceed (or is by the claim expressly limited to) that which would have been available if the branch or agency had been a person resident in the United Kingdom and the income or gains in question had been income or gains of that person.]

(c) <sup>F26</sup> .....

#### Textual Amendments

- F24** Words in s. 794(2)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 6 para. 103](#) (with [Sch. 7](#))
- F25** S. 794(2)(bb) inserted (with effect in accordance with [Sch. 30 para. 4\(14\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 30 para. 4\(5\)](#)
- F26** S. 794(2)(c) repealed (with effect in accordance with [Sch. 30 para. 4\(14\)](#) of the repealing Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 30 para. 4\(6\)](#), [Sch. 40 Pt. 2\(13\)](#)

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

- C23** Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by [The Lloyd's Underwriters \(Double Taxation Relief\) \(Corporate Members\) Regulations 2006 \(S.I. 2006/3262\)](#), [reg. 4](#)
- C24** S. 794(2)(bb) modified (with effect in accordance with s. 153(4) of the modifying Act) by [Finance Act 2003 \(c. 14\)](#), [s. 153\(2\)\(a\)](#)

#### Marginal Citations

- M13** Source—1970 s.502; 1982 s.67; 1972 s.100(1).

## 795 Computation of income subject to foreign tax.

- <sup>M14</sup>(1) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income and income tax is payable by reference to the amount received in the United Kingdom, the amount received shall be treated for the purposes of income tax as increased by <sup>F27</sup>—
- (a) the amount of the foreign tax in respect of the income, including in the case of a dividend any underlying tax which under the arrangements is to be taken into account in considering whether any and if so what credit is to be allowed in respect of the dividend <sup>F28</sup>, and
  - (b) the amount of any special withholding tax levied in respect of the income.]
- (2) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income or gain and subsection (1) above does not apply, then, in computing the amount of the income or gain for the purposes of income tax or corporation tax—
- (a) no deduction shall be made for foreign tax <sup>F29</sup>or special withholding tax], whether in respect of the same or any other income or gain; and
  - (b) the amount of the income shall, in the case of a dividend, be treated as increased by—
    - <sup>F30</sup>(i) any underlying tax which, under the arrangements, is to be taken into account in considering whether any and if so what credit is to be allowed in respect of the dividend <sup>F31</sup>, and

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- (ii) any underlying tax which, by virtue of section 799(1)(b) or section 799(1B)(b), does not fall to be so taken into account].
- (3) The amount of any income or gain shall not be treated as increased under this section by reference to any foreign tax which, although not payable, falls to be taken into account for the purposes of section 788(5).

[<sup>F32</sup>(3A) <sup>F33</sup> . . . . .]

[<sup>F34</sup>(4) Subsections (2) and (3) above have effect for the purposes of corporation tax notwithstanding anything in [<sup>F35</sup>—

- (a) [<sup>F36</sup>section 464(1) of CTA 2009] (matters to be brought into account in the case of loan relationships only under [<sup>F36</sup>Part 5] of that Act) [<sup>F37</sup>; or
- (b) [<sup>F38</sup>section 906(1) of CTA 2009] (matters to be brought into account in respect of intangible fixed assets only under [<sup>F38</sup>Part 8 of that Act]).]

[<sup>F39</sup>(5) In this section—

- (a) “special withholding tax” has the same meaning as in Chapter 7 of Part 3 of the Finance Act 2004 (see section 107(3) of that Act); and
- (b) references to special withholding tax are to special withholding tax in respect of which a claim has been made under that Chapter.]

#### Textual Amendments

- F27** Words in s. 795(1) renumbered as s. 795(1)(a) (22.7.2004) by virtue of Finance Act 2004 (c. 12), s. 112(2)
- F28** S. 795(1)(b) and preceding word inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 112(2)
- F29** Words in s. 795(2)(a) inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 112(3)
- F30** Words in s. 795(2)(b) renumbered as s. 795(2)(b)(i) (with effect in accordance with Sch. 27 para. 1(4) of the amending Act) by virtue of Finance Act 2001 (c. 9), Sch. 27 para. 1(2)
- F31** S. 795(2)(b)(ii) and preceding word inserted (with effect in accordance with Sch. 27 para. 1(4) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 1(2)
- F32** S. 795(3A) inserted (with effect in accordance with Sch. 27 para. 1(4) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 1(3)
- F33** S. 795(3A) omitted (with effect in accordance with Sch. 14 para. 31 of the repealing Act) by virtue of Finance Act 2009 (c. 10), Sch. 14 para. 7
- F34** S. 795(4) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 41 (with Sch. 15)
- F35** Words in s. 795(4) renumbered as s. 795(4)(a) (24.7.2002) by virtue of Finance Act 2002 (c. 23), Sch. 30 para. 5(2)
- F36** Words in s. 795(4)(a) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 245(a) (with Sch. 2 Pts. 1, 2)
- F37** S. 795(4)(b) and preceding word inserted (24.7.2002) by Finance Act 2002 (c. 23), Sch. 30 para. 5(2)
- F38** Words in s. 795(4)(b) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 245(b) (with Sch. 2 Pts. 1, 2)
- F39** S. 795(5) inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 112(4)

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

- C25** Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), reg. 4
- C26** S. 795(1)(b) modified by Taxation of Chargeable Gains Act 1992 (c. 12), s. 277(1A)-(1C) (as inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 112(6))

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### Marginal Citations

**M14** Source—1970 s.503; 1972 s.100(1); 1987 Sch.15 2(18)

### [<sup>F40</sup>795A] Limits on credit: minimisation of the foreign tax.

- (1) The amount of credit for foreign tax which, under any arrangements, is to be allowed against tax in respect of any income or chargeable gain shall not exceed the credit which would be allowed had all reasonable steps been taken—
  - (a) under the law of the territory concerned, and
  - (b) under any arrangements made [<sup>F41</sup>in relation to] that territory, to minimise the amount of tax payable in that territory.
- (2) The steps mentioned in subsection (1) above include—
  - (a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances; and
  - (b) making elections for tax purposes.
- (3) For the purposes of subsection (1) above, any question as to the steps which it would have been reasonable for a person to take shall be determined on the basis of what the person might reasonably be expected to have done in the absence of relief under this Part against tax in the United Kingdom.]

### Textual Amendments

- F40** S. 795A inserted (with effect in accordance with Sch. 30 para. 6(2) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 6(1)
- F41** Words in s. 795A(1)(b) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), s. 88(2)(a)

### Modifications etc. (not altering text)

- C27** Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), reg. 4

### 796 Limits on credit: income tax.

- <sup>M15</sup>(1) The amount of the credit for foreign tax which, under any arrangements, is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between the amounts of income tax which would be borne by him for the year (no credit being allowed for foreign tax [<sup>F42</sup>but allowing for the making of any other income tax reduction under the Income Tax Acts][<sup>F43</sup>, except a reduction under section 26 of FA 2005])—
- (a) if he were charged to tax on his total income for the year, computed in accordance with section 795; and
  - (b) if he were charged to tax on the same income, computed in the same way, but excluding the income in respect of which the credit is to be allowed.
- (2) Where credit for foreign tax is to be allowed in respect of income from more than one source, subsection (1) above shall be applied successively to the income from each



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source, but so that on each successive application, paragraph (a) shall apply to the total income exclusive of the income to which the subsection has already been applied.

[<sup>F44</sup>(2A) See section 29(2) and (3) of ITA 2007 (tax reductions limited by reference to tax liability) for further limits on the total amount of credit for foreign tax to be allowed to a person against income tax.]

(3) Without prejudice to subsections (1) and (2) above, the total credit for foreign tax to be allowed to a person against income tax for any year of assessment under all arrangements having effect by virtue of section 788 shall not exceed the total income tax payable by him for that year of assessment, [<sup>F45</sup>less the total amount of the tax treated under section 414 of ITA 2007 (gift aid) as deducted from gifts made by him in that year].

#### Textual Amendments

**F42** Words in s. 796(1) inserted (with effect in accordance with s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 12**

**F43** Words in s. 796(1) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 193(2)** (with Sch. 1 para. 193(5) (as inserted by S.I. 2007/3506, **arts. 1, 3(5)** and as amended by S.I. 2009/2859, **arts. 1, 4(6)(b)**), Sch. 2)

**F44** S. 796(2A) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 193(3)** (with Sch. 1 para. 193(5) (as inserted by S.I. 2007/3506, **arts. 1, 3(5)** and as amended by S.I. 2009/2859, **arts. 1, 4(6)(b)**), Sch. 2)

**F45** Words in s. 796(3) substituted (6.4.2007 with effect in accordance with S.I. 2009/2859, **art. 1(2)**) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 193(4)** (as substituted by S.I. 2009/2859, **art. 4(6)(a)**) (with Sch. 2)

#### Marginal Citations

**M15** Source—1970 s.504

### 797 Limits on credit: corporation tax.

<sup>M16</sup>(1) The amount of the credit for foreign tax which under any arrangements is to be allowed against corporation tax in respect of any income or chargeable gain (“the relevant income or gain”) shall not exceed the corporation tax attributable to the relevant income or gain, determined in accordance with [<sup>F46</sup>the following provisions of this section] below.

(2) <sup>M17</sup>Subject to [<sup>F47</sup>subsections (2A) and (3)] below, the amount of corporation tax attributable to the relevant income or gain shall be treated as equal to such proportion of the amount of that income or gain as corresponds to the rate of corporation tax payable by the company (before any credit under this Part) on its income or chargeable gains for the accounting period in which the income arises or the gain accrues (“the relevant accounting period”).

[<sup>F48</sup>(2A) The provisions of [<sup>F49</sup>Chapter 4 of Part 2 of CTA 2009 (profits attributable to permanent establishment), and of any regulations made under section 24 of that Act], apply, with the necessary modifications, in determining for the purposes of this section how much of the chargeable profits of a company resident in the United Kingdom is attributable to a permanent establishment of the company outside the United Kingdom.]



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- (3) Where in the relevant accounting period there is any deduction to be made for charges on income, expenses of management [<sup>F50</sup>expenses payable (within the meaning of section 76(1))] or other amounts which can be deducted from or set against or treated as reducing profits of more than one description—
- (a) the company may for the purposes of this section allocate the deduction in such amounts and to such of its profits for that period as it thinks fit; and
  - (b) the amount of the relevant income or gain shall be treated for the purposes of subsection (2) above as reduced or, as the case may be, extinguished by so much (if any) of the deduction as is allocated to it.
- [<sup>F51</sup>(3A) Where, in a case to which section 797A does not apply, a company has a non-trading deficit on its loan relationships for the relevant accounting period, then for the purposes of subsection (3) above that deficit shall be treated, to the extent that it is an amount—
- [<sup>F52</sup>(a) which falls to be set off under section 388(1) of CTA 2009 (insurance companies: basic rule: deficit set off against income and gains of deficit period), or
  - (b) to which a claim under section 459(1)(a) of that Act (claim to set off deficit against profits of deficit period) relates,]
- as an amount that can in that period be set against profits of any description but can be allocated in accordance with subsection (3) above only to the profits against which it is set off in pursuance of the claim.
- (3B) For the purposes of subsection (3) above, where—
- (a) section 797A does not apply in the case of any company, and
  - (b) any amount is carried forward to the relevant accounting period in pursuance of [<sup>F53</sup>section 457(1) of CTA 2009]<sup>F54</sup> . . . ,
- then that amount must be allocated to non-trading profits of the company for that period (so far as they are sufficient for the purpose) and cannot be allocated to any other profits.]
- (4) <sup>F55</sup> . . . . .
- (5) <sup>F55</sup> . . . . .
- [<sup>F56</sup>(6) In this section “non-trading profits” has the same meaning as in [<sup>F57</sup>Chapter 16 of Part 5 of CTA 2009 (see section 457(5) of that Act)].]

#### Textual Amendments

- F46** Words in s. 797(1) substituted (with effect in accordance with s. 154(5) of the amending Act) by Finance Act 2003 (c. 14), s. 154(2)
- F47** Words in s. 797(2) substituted (with effect in accordance with s. 154(5) of the amending Act) by Finance Act 2003 (c. 14), s. 154(3)
- F48** S. 797(2A) inserted (with effect in accordance with s. 154(5) of the amending Act) by Finance Act 2003 (c. 14), s. 154(4)
- F49** Words in s. 797(2A) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 246(2) (with Sch. 2 Pts. 1, 2)
- F50** Words in s. 797(3) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 34(2)
- F51** S. 797(3A)(3B) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 42(1) (with Sch. 15)

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- F52** Words in s. 797(3A) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 246(3)** (with Sch. 2 Pts. 1, 2)
- F53** Words in s. 797(3B)(b) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 246(4)** (with Sch. 2 Pts. 1, 2)
- F54** Words in s. 797(3B)(b) repealed (retrospectively) by Finance Act 1998 (c. 36), s. 82(2)(a)(4), **Sch. 27 Pt. 3(17)**, Note
- F55** S. 797(4)(5) repealed (with effect in accordance with Sch. 3 para. 35(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 35(2), **Sch. 27 Pt. 3(2)**, Note
- F56** S. 797(6) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 42(2)** (with Sch. 15)
- F57** Words in s. 797(6) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 246(5)** (with Sch. 2 Pts. 1, 2)

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

- C28** Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

#### Marginal Citations

- M16** Source—1970 s.505; 1972 s.100(1), (3); 1984 s.53(1)
- M17** Source—1972 s.100(4)-(6A); 1984 s.53(1); 1986 s.49; 1987 (No.2) s.77

### [<sup>F60</sup>797A Foreign tax on [<sup>F58</sup>items giving rise to] a non-trading credit [<sup>F59</sup>: loan relationships].

- (1) This section applies for the purposes of any arrangements where, in the case of any company—
  - (a) any non-trading credit relating to an [<sup>F61</sup>item] is brought into account for the purposes of [<sup>F62</sup>Part 5 of CTA 2009] (loan relationships) for any accounting period (“the applicable accounting period”); and
  - (b) there is in respect of [<sup>F63</sup>that item] an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax computed by reference to that interest.
- (2) It shall be assumed that tax chargeable under [<sup>F64</sup>section 299 of CTA 2009] on the profits <sup>F65</sup> . . . arising for the applicable accounting period from the company’s loan relationships falls to be computed on the actual amount of its non-trading credits for that period, and without any deduction in respect of non-trading debits.
- (3) Section 797(3) shall have effect (subject to subsection (7) below) as if—
  - (a) there were for the applicable accounting period an amount equal to the adjusted amount of the non-trading debits falling to be brought into account by being set against profits of the company for that period of any description; and
  - (b) different parts of that amount might be set against different profits.
- (4) For the purposes of this section, the adjusted amount of a company’s non-trading debits for any accounting period is the amount equal, in the case of that company, to the aggregate of the non-trading debits given for that period for the purposes of [<sup>F66</sup>Part 5 of CTA 2009] (loan relationships) less the aggregate of the amounts specified in subsection (5) below.
- (5) Those amounts are—

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- (a) so much of any non-trading deficit for the applicable accounting period as is an amount to which a claim under [<sup>F67</sup>section 389(1) or 459(1)(b) of CTA 2009][<sup>F68</sup>(deficit carried back and set against profits)] relates; [<sup>F69</sup>and]
- [<sup>F70</sup>(aa) so much of any non-trading deficit for that period as is surrendered as group relief by virtue of section 403 of the Taxes Act 1988; and]
- (b) so much of any non-trading deficit for that period as falls to be carried forward to a subsequent period in accordance with [<sup>F71</sup>section 391 or 457(1) of CTA 2009]; <sup>F72</sup> . . .
- (c) <sup>F72</sup> . . . . .  
[<sup>F73F74</sup> . . . . . ]
- (6) Section 797(3) shall have effect as if any amount [<sup>F75</sup>carried forward to the applicable accounting period [<sup>F76</sup>under [<sup>F77</sup>section 457(1) of CTA 2009]]] were an amount capable of being allocated only to any non-trading profits of the company.
- (7) Where—
- (a) the company has a non-trading deficit for the applicable accounting period,
- (b) the amount of that deficit exceeds the aggregate of the amounts specified in subsection (5) above, and
- (c) [<sup>F78</sup>as the result of—
- (i) the application of section 388(1) of CTA 2009 (insurance companies: basic rule: deficit set off against income and gains of deficit period), or
- (ii) a claim under section 459(1)(a) of that Act (claim to set off deficit against profits of deficit period),]
- the excess falls to be set off against profits of any description,
- section 797(3) shall have effect as if non-trading debits of the company which in aggregate are equal to the amount of the excess were required to be allocated to the profits against which they are set off in pursuance of the claim.
- [<sup>F79F80</sup> . . . . . ]
- (8) In this section “non-trading profits” has the same meaning as in [<sup>F81</sup>Chapter 16 of Part 5 of CTA 2009 (see section 457(5) of that Act)].]

#### Textual Amendments

- F58** Word in s. 797A sidenote substituted (with effect in accordance with Sch. 30 para. 7(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 7(3)**
- F59** Words in s. 797A sidenote added (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(3)**
- F60** S. 797A inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 43** (with Sch. 15)
- F61** Word in s. 797A(1)(a) substituted (with effect in accordance with Sch. 30 para. 7(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 7(2)(a)**
- F62** Words in s. 797A(1)(a) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 247(2)** (with Sch. 2 Pts. 1, 2)
- F63** Words in s. 797A(1)(b) substituted (with effect in accordance with Sch. 30 para. 7(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 7(2)(b)**
- F64** Words in s. 797A(2) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 247(3)(a)** (with Sch. 2 Pts. 1, 2)
- F65** Words in s. 797A(2) repealed (1.4.2009 with effect in accordance with s. 1329(1) of the repealing Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 247(3)(b), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

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- F66** Words in s. 797A(4) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 247(4)** (with Sch. 2 Pts. 1, 2)
- F67** Words in s. 797A(5)(a) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 247(5)(a)** (with Sch. 2 Pts. 1, 2)
- F68** Words in s. 797A(5)(a) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(2)(a)(ii)**
- F69** Word at the end of s. 797A(5)(a) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(b)(4)**
- F70** S. 797A(5)(aa) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(2)(b)**
- F71** Words in s. 797A(5)(b) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 247(5)(b)** (with Sch. 2 Pts. 1, 2)
- F72** S. 797A(5)(c) and preceding word repealed (retrospectively) by Finance Act 1998 (c. 36), s. 82(2)(b)(4), **Sch. 27 Pt. 3(17)**, Note
- F73** Words at the end of s. 797A(5) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(c)(4)**
- F74** Words in s. 797A(5) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(12)**, Note
- F75** Words in s. 797A(6) substituted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(d)(4)**
- F76** Words in s. 797A(6) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(3)**
- F77** Words in s. 797A(6) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 247(6)** (with Sch. 2 Pts. 1, 2)
- F78** Words in s. 797A(7)(c) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 247(7)** (with Sch. 2 Pts. 1, 2)
- F79** Words at the end of s. 797A(7) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(e)(4)**
- F80** Words in s. 797A(7) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(12)**, Note
- F81** Words in s. 797A(8) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 247(8)** (with Sch. 2 Pts. 1, 2)

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

- C29** Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

**[<sup>F82</sup>797B Foreign tax on items giving rise to a non-trading credit: intangible fixed assets**

- (1) This section applies for the purposes of any arrangements where, in the case of a company—
- (a) a non-trading credit relating to an item is brought into account for the purposes of [<sup>F83</sup>Part 8 of CTA 2009] (intangible fixed assets) for an accounting period (“the applicable accounting period”), and
  - (b) there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax computed by reference to that item.
- (2) It shall be assumed that tax chargeable under [<sup>F84</sup>that Part of that Act] on the profits and gains arising for the applicable accounting period from the company’s intangible fixed assets falls to be computed on the actual amount of its non-trading credits for that period, and without any deduction in respect of non-trading debits.
- (3) Section 797(3) shall have effect as if—

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- (a) there were for the applicable accounting period an amount equal to the adjusted amount of the non-trading debits falling to be brought into account by being set against profits of the company for that period of any description, and
  - (b) different parts of that amount might be set against different profits.
- (4) For this purpose the adjusted amount of a company's non-trading debits for an accounting period is given by:

## TotalDebits – AmountCarriedForward

where—

Total Debits is the aggregate amount of the company's non-trading debits for that accounting period under [<sup>F85</sup>Part 8 of CTA 2009] (intangible fixed assets), and

Amount Carried Forward is the amount (if any) carried forward to the next accounting period of the company under [<sup>F85</sup>section 753(3) of that Act] (carry-forward of non-trading loss in respect of which no claim is made for it to be set against total profits of current period).]

### Textual Amendments

- F82** S. 797B inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(4)**
- F83** Words in s. 797B(1)(a) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 248(a)** (with Sch. 2 Pts. 1, 2)
- F84** Words in s. 797B(2) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 248(b)** (with Sch. 2 Pts. 1, 2)
- F85** Words in s. 797B(4) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 248(c)** (with Sch. 2 Pts. 1, 2)

### Modifications etc. (not altering text)

- C30** Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

### [<sup>F86</sup>798 Section 796: trade income

- (1) This section has effect in relation to the application of section 796(1) to the allowance of credit for foreign tax against income tax in respect of trade income.

[<sup>F87</sup>(1A) The references in section 796 and this section to income in respect of which a credit for foreign tax is to be allowed are to be treated as referring only to income arising out of the transaction, arrangement or asset in connection with which the credit for foreign tax arises.]

- (2) In making the computations required by section 796(1)(a) and (b) there shall be deducted from the amount of the income in respect of which the credit is to be allowed deductions, charges or expenses which would be allowable in a computation of the taxpayer's liability in respect of that income.

- (3) The reference in subsection (2) to allowable deductions, charges or expenses includes a reference to a reasonable apportionment of allowable deductions or expenses which



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relate partly to the income [<sup>F88</sup>in respect of which the credit is to be allowed] and partly to other matters.

- (4) Where royalties (as defined in arrangements having effect by virtue of section 788) are paid in respect of an asset in more than one jurisdiction outside the United Kingdom, for the purposes of section 796(1)—
- (a) royalty income arising in different jurisdictions (other than the United Kingdom) in a year of assessment in respect of that asset shall be treated as a single item of income, and
  - (b) credits available for foreign tax in respect of the royalty income shall be aggregated accordingly.
- (5) In this section “trade income” means income chargeable to tax under—
- (a) Chapter 2 or 18 of Part 2 of ITTOIA 2005 (trade profits and post-cessation receipts),
  - (b) Chapter 3 or 10 of Part 3 of ITTOIA 2005 (profits of property businesses and post-cessation receipts), or
  - (c) Chapter 11 of Part 3 of ITTOIA 2005 (overseas property income).]

#### Textual Amendments

- F86** Ss. 798-798C substituted for ss. 798-798B (with effect in accordance with s. 86(3)-(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 86\(1\)](#)
- F87** S. 798(1A) inserted (with effect in accordance with s. 57(4) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 57\(2\)](#)
- F88** Words in s. 798(3) inserted (with effect in accordance with s. 57(4) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 57\(3\)](#)

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

- C31** Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by [The Lloyd's Underwriters \(Double Taxation Relief\) \(Corporate Members\) Regulations 2006 \(S.I. 2006/3262\), reg. 4](#)

#### [<sup>F89</sup>[<sup>F90</sup>798] **Section 797: trade income**

- (1) This section has effect in relation to the application of section 797(1) to the allowance of credit for foreign tax against corporation tax in respect of trade income.
- (2) The reference in section 797(1) to the relevant income or gain shall be treated as referring only to income arising or gains accruing out of the transaction, arrangement or asset in connection with which the credit for foreign tax arises.
- (3) In determining for the purposes of section 797(1) the amount of corporation tax attributable to any income or gain, there shall be taken into account—
- (a) deductions or expenses which would be allowable in the computation of the taxpayer's liability,
  - (b) a reasonable apportionment of allowable deductions or expenses which relate partly to the transaction, arrangement or asset from which the income or gain arises and partly to other matters, and
  - (c) expenses of a company connected (within the meaning given by section 839) with the taxpayer, in so far as reasonably attributable to the income or gain.

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[<sup>F91</sup>(3A) Subsection (3) is subject to subsection (3B) if—

- (a) the taxpayer is a bank or a company connected with a bank, and
- (b) the amount of the included funding costs is significantly less than the amount of the notional funding costs.

(3B) The amount of the notional funding costs is to be included in the subsection (3) total, but only to the extent that it exceeds the amount of the included funding costs.

(3C) In subsections (3A) and (3B) and this subsection—

“bank” has the meaning given by section 840A;

“connected” has the meaning given by section 839;

“included funding costs” means the total of the funding costs that are—

- (a) incurred by the taxpayer, or any company connected with the taxpayer, in respect of capital used to fund the relevant transaction, and
- (b) included in the subsection (3) total (before the application of subsection (3B));

“notional funding costs” means the funding costs that the relevant bank would incur (on the basis of its average funding costs) in respect of the capital that would be needed to wholly fund the relevant transaction if that transaction were funded in that way (and for this purpose “relevant bank” means the bank that is the taxpayer, or with which the taxpayer is connected);

“relevant transaction” means the transaction, arrangement or asset from which the income or gain arises;

“subsection (3) total” means the amount to be taken into account under subsection (3) for the purposes of section 797(1).]

(4) In this section and section 798B “trade income” means—

- [<sup>F92</sup>(a) income chargeable to tax under Chapter 2 or 15 of Part 3 of CTA 2009 (trade profits and post-cessation receipts),
- (b) income chargeable to tax under Chapter 3 or 9 of Part 4 of CTA 2009 (profits of property businesses and post-cessation receipts),
- (c) income which arises from a source outside the United Kingdom and is chargeable to tax under section 979 of CTA 2009 (charge to tax on income not otherwise charged), and
- (d) any other income or profits which by a provision of this Act is or are—
  - (i) chargeable to tax under Chapter 2 of Part 3 of CTA 2009, or
  - (ii) calculated in the same way as the profits of a trade;]

but this section shall not apply in relation to income to which section 804C below applies.

[<sup>F93</sup>(5) In subsection (4) the references—

- (a) to income chargeable under Chapter 15 of Part 3 of CTA 2009, and
- (b) to income chargeable under Chapter 9 of Part 4 of CTA 2009,

do not include income that would, but for the repeal by CTA 2009 of section 103 above, have been chargeable to corporation tax under that section.]]]

#### Textual Amendments

**F89** S. 798A inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 104



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- F90** Ss. 798-798C substituted for ss. 798-798B (with effect in accordance with s. 86(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), s. 86(1)
- F91** S. 798A(3A)-(3C) inserted (with effect in accordance with s. 60(4) of the amending Act) by Finance Act 2009 (c. 10), s. 60(2)
- F92** S. 798A(4)(a)-(d) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 249(2) (with Sch. 2 Pts. 1, 2)
- F93** S. 798A(5) inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 249(3) (with Sch. 2 Pts. 1, 2)

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

- C32** Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), reg. 4

**[<sup>F94</sup>[<sup>F95</sup>798A] Section 798A: special cases**

- (1) Where—
- (a) a credit for foreign tax arises in connection with an asset, and
  - (b) the asset is in a hedging relationship with a derivative contract,
- in the application of section 798A(2) the reference to the income arising out of the asset shall be taken as a reference to the income arising out of the asset and the derivative contract taken together (but taking account of the income or loss from the derivative contract only in so far as reasonably attributable to the hedging relationship).
- (2) For the purposes of subsection (1)(b) an asset is in a hedging relationship with a derivative contract if—
- (a) the asset is acquired as a hedge of risk in connection with the contract, or
  - (b) the contract is entered into as a hedge of risk in connection with the asset;
- and if an asset or a contract is wholly or partly designated as a hedge for the purposes of a person's accounts, that shall be conclusive for the purpose of this subsection.
- (3) Where royalties (as defined in arrangements having effect by virtue of section 788) are paid in respect of an asset in more than one jurisdiction outside the United Kingdom, for the purposes of section 798A(2)—
- (a) royalty income arising in more than one jurisdiction (other than the United Kingdom) in a year of assessment in respect of that asset shall be treated as income arising from a single transaction, arrangement or asset, and
  - (b) credits available for foreign tax in respect of the royalty income shall be aggregated accordingly.
- (4) If a person (“A”) carrying on a trade giving rise to trade income enters into a scheme or arrangement with another person (“B”) a main purpose of which is to alter the effect of section 798A in relation to A, income received in pursuance of the scheme or arrangement shall be treated for the purposes of section 798A as trade income of B (and not as income of A).

- [<sup>F96</sup>(4A) Income of a person (“D”) is to be treated for the purposes of section 798A as trade income (if it is not otherwise trade income) of D in a case where—
- (a) the income is received by D as part of a scheme or arrangement entered into by D and a connected person (“C”),
  - (b) if C had received the income, it would be reasonable to assume that it would be trade income of C, and

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- (c) a main purpose of the scheme or arrangement is to produce the result that section 798A will not have effect in relation to the income because it is received by D.
- (4B) For the purposes of subsection (4A)(b) it is to be assumed that, in the case of any relevant transaction to which a relevant person is a party, C were that party to that transaction.
- (4C) In subsections (4A) and (4B) and this subsection—  
“connected person” means a person with whom D is connected (within the meaning of section 839);  
“relevant person” means—  
(a) D, or  
(b) any other connected person who is a party to the scheme or arrangement;  
“relevant transaction” means any of the transactions giving rise to the income.]
- (5) Where—  
(a) transactions, arrangements or assets are treated by a taxpayer as a series or group (the “portfolio”),  
(b) a number of credits for foreign tax arise in respect of the portfolio, and  
(c) either—  
(i) it is not reasonably practicable to prepare a separate computation of income or gain for the purposes of section 798A(2) in respect of each transaction, arrangement or asset, or  
(ii) a separate computation of income or gain in respect of each transaction, arrangement or asset for the purposes of section 798A(2) would not, compared with an aggregated computation, make a material difference to the amount of credit for foreign tax which is allowable,  
the income or gains arising from the portfolio, or part of the portfolio, may be aggregated and apportioned for the purposes of section 798A(2) in a fair and reasonable manner.]]

#### **Textual Amendments**

- F94** S. 798B inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 105
- F95** Ss. 798-798C substituted for ss. 798-798B (with effect in accordance with s. 86(3)-(5) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), s. 86(1)
- F96** S. 798B(4A)-(4C) inserted (with effect in accordance with s. 60(4) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), s. 60(3)

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

- C33** Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by [The Lloyd's Underwriters \(Double Taxation Relief\) \(Corporate Members\) Regulations 2006 \(S.I. 2006/3262\)](#), reg. 4

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### [<sup>F97</sup>798C] Disallowed credit: use as deduction

(1) This section applies where the application of section 796(1) or 797(1) prevents an amount of credit for foreign tax from being allowable against income tax or corporation tax.

[<sup>F98</sup>(2) The taxpayer's income shall be treated as reduced by the amount of disallowed credit.

(3) Subsection (2) applies only in so far as the amount of disallowed credit does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid.

(4) For the purpose of subsection (3), payment of the foreign tax is to be taken into account despite section 795(2).]

#### Textual Amendments

**F97** Ss. 798-798C substituted for ss. 798-798B (with effect in accordance with s. 86(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), s. 86(1)

**F98** S. 798C(2)-(4) substituted for s. 798C(2) (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 194 (with Sch. 2)

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

**C34** Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), reg. 4

### *Tax underlying dividends*

#### 799 Computation of underlying tax.

<sup>M18</sup>(1) Where in the case of any dividend arrangements provide for underlying tax to be taken into account in considering whether any and if so what credit is to be allowed against the United Kingdom taxes in respect of the dividend, the tax to be taken into account by virtue of that provision shall be so much of the foreign tax borne on the relevant profits by the body corporate paying the dividend as—

[<sup>F99</sup>(a)] is properly attributable to the proportion of the relevant profits represented by the dividend[<sup>F100</sup>, and

(b) does not exceed the amount calculated by applying the formula set out in subsection (1A) below.]

[<sup>F101</sup>[<sup>F102</sup>(1A) The formula is—

$$(D + U) \times M\%$$

where—

D is the amount of the dividend;

U is the amount of underlying tax that would fall to be taken into account as mentioned in subsection (1) above, apart from paragraph (b) of that subsection; and

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M% is the maximum relievable rate;

and for the purposes of this subsection the maximum relievable rate is the rate of corporation tax [<sup>F103</sup>applicable to profits of the company by which the dividend is received for the accounting period in which it is received or, where there is more than one such rate, the average rate over the whole of that accounting period].]

[<sup>F104</sup>(1B) Where, under any arrangements, a company makes a claim for an allowance by way of credit in accordance with this Chapter—

- (a) the claim may be so framed as to exclude such amounts of underlying tax as may be specified for the purpose in the claim; and
- (b) any amounts of underlying tax so excluded shall be left out of account for the purposes of this section.]

(2) Where under the foreign tax law the dividend has been increased for tax purposes by an amount to be set off against the recipient's own tax under that law or, to the extent that it exceeds his own tax thereunder, paid to him, then, from the amount of the underlying tax to be taken into account under subsection (1) above there is to be subtracted the amount of that increase.

[<sup>F105</sup>(2A) No underlying tax shall be taken into account under subsection (1) above in the case of a dividend if, under the law of any territory outside the United Kingdom, a deduction is allowed to a resident of that territory in respect of an amount determined by reference to the dividend.]

(3) For the purposes of subsection (1) above the relevant profits, subject to subsection (4) below, are—

- [<sup>F106</sup>(za) if the dividend is received in an accounting period of the recipient in which the recipient is not a small company, and the dividend is a relevant dividend, the profits in respect of which the dividend is paid;]
- (a) [<sup>F107</sup>in a case not falling under paragraph (za),] if the dividend is paid for a specified period, the profits of that period; [<sup>F108</sup>and]
- (b) <sup>F109</sup> .....
- (c) [<sup>F110</sup>in a case not falling under paragraph (za),] if the dividend is [<sup>F111</sup>not paid for a specified period], the profits of the last period for which accounts of the body corporate were made up which ended before the dividend became payable.

[<sup>F112</sup>(3A) For the purposes of subsection (3)—

- (a) “small company” has the same meaning as in Part 9A of CTA 2009 (company distributions),
- (b) “relevant dividend” means a dividend that, for the purposes of section 931H of that Act (dividends derived from transactions not designed to reduce tax), is treated as paid in respect of profits other than relevant profits (see subsection (4) of that section), and
- (c) the profits in respect of which a dividend is paid are the profits in respect of which the dividend is treated as paid for the purposes of that section.]

(4) If, in a case falling under paragraph (a) or (c) of subsection (3) above, the total dividend exceeds the profits available for distribution of the period mentioned in that paragraph the relevant profits shall be the profits of that period plus so much of the profits available for distribution of preceding periods (other than profits previously distributed or previously treated as relevant profits for the purposes of this section

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or section 506 of the 1970 Act) as is equal to the excess; and for the purposes of this subsection the profits of the most recent preceding period shall first be taken into account, then the profits of the next most recent preceding period, and so on.

[<sup>F113</sup>(5) For the purposes of paragraphs (a) and (c) of subsection (3) above, “profits”, in the case of any period, means the profits available for distribution.

(6) In subsections (4) and (5) above, “profits available for distribution” means, in the case of any company, the profits available for distribution as shown in accounts relating to the company—

- (a) drawn up in accordance with the law of the company’s home State, and
- (b) making no provision for reserves, bad debts [<sup>F114</sup>, impairment losses] or contingencies other than such as is required to be made under that law.

(7) In this section, “home State”, in the case of any company, means the country or territory under whose law the company is incorporated or formed.]

#### Textual Amendments

- F99** Words in s. 799(1) renumbered as s. 799(1)(a) (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by virtue of Finance Act 2000 (c. 17), Sch. 30 para. 8(2)
- F100** S. 799(1)(b) and preceding word inserted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 8(2)
- F101** S. 799(1A) inserted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 8(3)
- F102** S. 799(1A) substituted (with effect in accordance with Sch. 27 para. 2(4)(5) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 2(2)
- F103** Words in s. 799(1A) substituted (with effect in accordance with s. 57(6) of the amending Act) by Finance Act 2009 (c. 10), s. 57(1)
- F104** S. 799(1B) inserted (with effect in accordance with Sch. 27 para. 2(4)(5) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 2(3)
- F105** S. 799(2A) inserted (with effect in accordance with s. 85(2) of the amending Act) by Finance Act 2005 (c. 7), s. 85(1)
- F106** S. 799(3)(za) inserted (with effect in accordance with Sch. 14 para. 31 of the amending Act) by Finance Act 2009 (c. 10), Sch. 14 para. 8(2)(a)
- F107** Words in s. 799(3)(a) inserted (with effect in accordance with Sch. 14 para. 31 of the amending Act) by Finance Act 2009 (c. 10), Sch. 14 para. 8(2)(b)
- F108** Word at the end of s. 799(3)(a) inserted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 8(4)(a)
- F109** S. 799(3)(b) repealed (with effect in accordance with Sch. 30 para. 8(5)(6) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 8(4)(b), Sch. 40 Pt. 2(13), Note
- F110** Words in s. 799(3)(c) inserted (with effect in accordance with Sch. 14 para. 31 of the amending Act) by Finance Act 2009 (c. 10), Sch. 14 para. 8(2)(c)
- F111** Words in s. 799(3)(c) substituted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 8(4)(c)
- F112** S. 799(3A) inserted (with effect in accordance with Sch. 14 para. 31 of the amending Act) by Finance Act 2009 (c. 10), Sch. 14 para. 8(3)
- F113** S. 799(5)-(7) added (with effect in accordance with Sch. 30 para. 9(3) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 9(2)
- F114** Words in s. 799(6)(b) inserted (with effect in accordance with s. 80(3)(4) of the amending Act) by Finance Act 2005 (c. 7), Sch. 4 para. 7

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**Marginal Citations**

**M18** Source—1970 s.506; 1976 s.50(3)

**800 Dividends paid between related companies but not covered by arrangements.**

<sup>F115</sup> .....

**Textual Amendments**

**F115** S. 800 repealed (with effect in accordance with Sch. 30 para. 10(2) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 10(1), Sch. 40 Pt. 2(13), Note

**801 Dividends paid between related companies: relief for U.K. and third country taxes.**

<sup>M19</sup>(1) Where a company resident outside the United Kingdom (“the overseas company”) pays a dividend to a [<sup>F116</sup> company falling within subsection (1A) below (“the relevant company”)] and the overseas company is related [<sup>F117</sup>to the relevant company], then for the purpose of allowing credit under any arrangements against corporation tax in respect of the dividend, there shall be taken into account, as if it were tax payable under the law of the territory in which the overseas company is resident—

- (a) any United Kingdom income tax or corporation tax payable by the overseas company in respect of its profits; and
- (b) any tax which, under the law of any other territory, is payable by the overseas company in respect of its profits.

[<sup>F118</sup>(1A) A company falls within this subsection if—

- (a) it is resident in the United Kingdom; or
- (b) it is resident outside the United Kingdom but the dividend mentioned in subsection (1) above forms part of the profits of a [<sup>F119</sup>permanent establishment] of the company’s in the United Kingdom.]

(2) Where the overseas company has received a dividend from a third company and the third company is related to the overseas company, then, [<sup>F120</sup>subject to subsection (4)] below, there shall be treated for the purposes of subsection (1) above as tax paid by the overseas company in respect of its profits any underlying tax payable by the third company, to the extent that it would be taken into account under this Part if the dividend had been paid [<sup>F121</sup>(at the time when the dividend mentioned in subsection (1) above is received)] by a company resident outside the United Kingdom to a company resident in the United Kingdom and arrangements had provided for underlying tax to be taken into account.

[<sup>F122</sup>(2A) Section 799(1)(b) applies for the purposes of subsection (2) above only—

- (a) if the overseas company and the third company are not resident in the same territory; or

[<sup>F123</sup>(aa) [<sup>F124</sup>.....].]

- (b) in such other cases as may be prescribed by regulations made by the Treasury.]

[<sup>F125</sup>(2B) [<sup>F124</sup>.....].]

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(3) Where the third company has received a dividend from a fourth company and the fourth company is related to the third company, then, subject to subsection (4) below, tax payable by the fourth company shall similarly be treated for the purposes of subsection (2) above as tax paid by the third company; and so on for successive companies each of which is related to the one before.

(4) Subsections (2) and (3) above are subject to the following limitations—

- (a) no tax shall be taken into account in respect of a dividend paid by a company resident in the United Kingdom except United Kingdom corporation tax and any tax for which that company is entitled to credit under this Part; and
- (b) no tax shall be taken into account in respect of a dividend paid by a company resident outside the United Kingdom to another such company unless it could have been taken into account under the other provisions of this Part had the other company been resident in the United Kingdom.

- [<sup>F126</sup>(4A) <sup>F127</sup> .....
- (4B) <sup>F127</sup> .....
- (4C) <sup>F127</sup> .....
- (4D) <sup>F127</sup> .....]

(5) For the purposes of this section a company is related to another company if that other company—

- (a) controls directly or indirectly, or
- (b) is a subsidiary of a company which controls directly or indirectly, not less than 10 per cent. of the voting power in the first-mentioned company.

[<sup>F128</sup>(5A) For the purposes of subsections (2) and (3) above (including any determination of the extent to which underlying tax paid by the third, fourth or subsequent company in question would be taken into account under this Part if the conditions specified for the purpose in subsection (2) above were satisfied) a company is also related to another company if that other company—

- (a) controls directly or indirectly, or
- (b) is a subsidiary of a company which controls directly or indirectly, not less than 10% of the ordinary share capital of the first-mentioned company.]

- [<sup>F129</sup>(6) <sup>F124</sup> .....
- (7) <sup>F124</sup> .....]

#### Textual Amendments

- F116** Words in s. 801(1) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 4(8)(a)
- F117** Words in s. 801(1) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 4(8)(b)
- F118** S. 801(1A) inserted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 4(9)
- F119** Words in s. 801(1A)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)



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- F120** Words in s. 801(2) substituted (with effect in accordance with s. 91(8) of the amending Act) by Finance Act 2005 (c. 7), s. 91(5)
- F121** Words in s. 801(2) inserted (with effect in accordance with s. 57(5) of the amending Act) by Finance Act 2009 (c. 10), s. 57(3)
- F122** S. 801(2A) inserted (with effect in accordance with Sch. 30 para. 11(3)(4) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 11(2)
- F123** S. 801(2A)(aa) inserted (with effect in accordance with s. 89(5) of the amending Act) by Finance Act 2005 (c. 7), s. 89(2)
- F124** S. 801(2A)(aa)(2B)(6)(7) omitted (with effect in accordance with Sch. 16 para. 6 of the repealing Act) by virtue of Finance Act 2009 (c. 10), Sch. 16 para. 2(3) (with Sch. 16 paras. 7, 8)
- F125** S. 801(2B) inserted (with effect in accordance with s. 89(5) of the amending Act) by Finance Act 2005 (c. 7), s. 89(3)
- F126** S. 801(4A)-(4D) inserted (with effect in accordance with Sch. 27 para. 3(4)(5) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 3(3)
- F127** S. 801(4A)-(4D) repealed (with effect in accordance with s. 91(8) of the repealing Act) by Finance Act 2005 (c. 7), s. 91(6), Sch. 11 Pt. 2(9), Note
- F128** S. 801(5A) inserted (with effect in accordance with s. 43(3) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 43(2)
- F129** S. 801(6)(7) inserted (with effect in accordance with s. 89(5) of the amending Act) by Finance Act 2005 (c. 7), s. 89(4)

#### Marginal Citations

- M19** Source—1970 s.508; 1971 s.26(2)

### [<sup>F130</sup>801A] Restriction of relief for underlying tax.

- (1) This section applies where—
- (a) [<sup>F131</sup>a company (“the claimant company”)] makes a claim for an allowance by way of credit in accordance with this Part;
  - (b) the claim relates to underlying tax on a dividend paid to that company by a company resident outside the United Kingdom (“the overseas company”);
  - (c) that underlying tax is or includes an amount in respect of tax (“the high rate tax”) payable by—
    - (i) the overseas company, or
    - (ii) such a third, fourth or successive company as is mentioned in section 801,
 at a rate in excess of the relievable rate; and
  - (d) the whole or any part of the amount in respect of the high rate tax which is or is included in the underlying tax would not be, or be included in, that underlying tax but for the existence of, or for there having been, an avoidance scheme.
- (2) Where this section applies, the amount of the credit to which [<sup>F132</sup>the claimant company] is entitled on the claim shall be determined as if the high rate tax had been tax at the relievable rate, instead of at a rate in excess of that rate.
- (3) For the purposes of this section tax shall be taken to be payable at a rate in excess of the relievable rate if, and to the extent that, the amount of that tax exceeds the amount that would represent tax on the relevant profits at the relievable rate.
- (4) In subsection (3) above “the relevant profits”, in relation to any tax, means the profits of the overseas company or, as the case may be, of the third, fourth or successive company which, for the purposes of this Part, are taken to bear that tax.

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- (5) In this section “the relievable rate” means the rate of corporation tax in force when the dividend mentioned in subsection (1)(b) above was paid.
- (6) In this section “an avoidance scheme” means any scheme or arrangement which—
- (a) falls within subsection (7) below; and
  - (b) is a scheme or arrangement the purpose, or one of the main purposes, of which is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.
- (7) A scheme or arrangement falls within this subsection if the parties to it include both—
- (a) [<sup>F132</sup>the claimant company], a company related to that company or a person connected with [<sup>F132</sup>the claimant company]; and
  - (b) a person who was not under the control of [<sup>F132</sup>the claimant company] at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.
- (8) In this section “arrangement” means an arrangement of any kind, whether in writing or not.
- [<sup>F133</sup>(9) For the purposes of this section, whether a person is connected with another is determined in accordance with section 839.]
- (10) Subsection (5) of section 801 (meaning of “related company”) shall apply for the purposes of this section as it applies for the purposes of that section.
- (11) For the purposes of this section a person who is a party to a scheme or arrangement shall be taken to have been under the control of [<sup>F132</sup>the claimant company] at all the following times, namely—
- (a) any time when that company would have been taken (in accordance with section 416) to have had control of that person for the purposes of Part XI;
  - (b) any time when that company would have been so taken if that section applied (with the necessary modifications) in the case of partnerships and unincorporated associations as it applies in the case of companies; and
  - (c) any time when that person acted in relation to that scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of that company.]

#### Textual Amendments

**F130** S. 801A inserted (with effect in accordance with s. 90(2) of the amending Act) by Finance Act 1997 (c. 16), s. 90(1)

**F131** Words in s. 801A(1)(a) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 4(11)

**F132** Words in s. 801A(2)(7)(11) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 4(12)

**F133** S. 801A(9) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 195 (with Sch. 2)

#### [<sup>F134</sup>801B] Dividends paid out of transferred profits.

- (1) This section applies where—

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- (a) a company (“company A”) resident outside the United Kingdom has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits;
  - (b) some or all of those profits become profits of another company resident outside the United Kingdom (“company B”) otherwise than by virtue of the payment of a dividend to company B; and
  - (c) company B pays a dividend out of those profits to another company (“company C”), wherever resident.
- (2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid—
- (a) by any company resident outside the United Kingdom (whether or not company B),
  - (b) to a company resident in the United Kingdom,
- as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1) (b) above.
- (3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom shall not exceed the amount which would have been allowable to that company had those profits become profits of company B by virtue of the payment of a dividend by company A to company B.]

**Textual Amendments**

**F134** S. 801B inserted (with effect in accordance with Sch. 30 para. 12(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 12(1)**

**[<sup>F135</sup>801C Separate streaming of dividend so far as representing an ADP dividend of a CFC.**

<sup>F136</sup> .....]

**Textual Amendments**

**F135** S. 801C inserted (with effect in accordance with Sch. 30 para. 13(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 13(1)**

**F136** S. 801C omitted (with effect in accordance with Sch. 16 para. 6 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 2(4)** (with Sch. 16 paras. 7, 8)

**802 U.K. insurance companies trading overseas.**

<sup>F137</sup> .....

**Textual Amendments**

**F137** S. 802 repealed (with effect in accordance with Sch. 30 para. 14(2) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 14(1), **Sch. 40 Pt. 2(13)**, Note

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### 803 Underlying tax reflecting interest on loans.

<sup>M20</sup>(1) This section applies in a case where—

- (a) a bank or a company connected with a bank makes a claim for an allowance by way of credit in accordance with this Chapter; and
- (b) the claim relates to underlying tax on a dividend [<sup>F138</sup> (“the overseas dividend”)] paid by the overseas company, within the meaning of section 801; and
- (c) that underlying tax is or includes tax payable under the law of a territory outside the United Kingdom on or by reference to [<sup>F139</sup> interest or dividends earned or received] in the course of its business by that overseas company or by such third, fourth or successive company as is referred to in subsection (2) or (3) of that section; and
- [<sup>F140</sup>(d) if the company which received the interest or dividends (“the company”) had been resident in the United Kingdom, [<sup>F141</sup>section 798A] would apply in relation to that company.]

(2) In a case where this section applies, the amount of the credit for that part of the foreign tax which consists of the tax referred to in subsection (1)(c) above shall not exceed an amount determined under subsection (3) below.

(3) The amount referred to in subsection (2) above is a sum equal to corporation tax, at the rate in force at the time the foreign tax referred to in paragraph (c) of subsection (1) above was chargeable, [<sup>F142</sup>on so much of the interest or dividends as exceeds the amount of the company’s relevant expenditure which is properly attributable to the earning of the interest or dividends].

- (4) <sup>F143</sup> .....
- (5) <sup>F143</sup> .....
- (6) <sup>F143</sup> .....
- (7) <sup>F143</sup> .....
- (8) <sup>F143</sup> .....
- (9) <sup>F143</sup> .....

[<sup>F144</sup>(10) In subsection (1) above “bank” means a company carrying on, in the United Kingdom or elsewhere, any trade which includes the receipt of interest or dividends, and [<sup>F145</sup>, for the purposes of that subsection, whether a company is connected with a bank is determined in accordance with section 839.]]

#### Textual Amendments

**F138** Words in s. 803(1)(b) inserted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), s. 106(2)(a)

**F139** Words in s. 803(1)(c) substituted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), s. 106(2)(b)

**F140** S. 803(1)(d) substituted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), s. 106(2)(c)

**F141** Words in s. 803(1)(d) substituted (with effect in accordance with s. 86(3)(4) of the amending Act) by Finance Act 2005 (c. 7), s. 86(2)(a)

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- F142** Words in s. 803(3) substituted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), s. 106(3)
- F143** S. 803(4)-(9) repealed (with effect in accordance with s. 86(3)(4) of the repealing Act) by Finance Act 2005 (c. 7), s. 86(2)(b), Sch. 11 Pt. 2(8), Note
- F144** S. 803(10) substituted for s. 803(10)(11) (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), s. 106(10)
- F145** Words in s. 803(10) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 196 (with Sch. 2)

#### Marginal Citations

**M20** Source—1982 s.66; 1987 (No.2) s.68

#### [<sup>F146</sup>803A Foreign taxation of group as a single entity.

- (1) This section applies in any case where, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in that territory (“the responsible company”) in respect of the aggregate profits, or aggregate profits and aggregate gains, of that company and one or more other companies so resident, taken together as a single taxable entity.

[<sup>F148</sup> .....]  
<sup>F147</sup>(1A)

- (2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1) above (the “non-resident companies”) to another company (“the recipient company”), as if—
- (a) the non-resident companies, taken together, were a single company,
  - (b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and
  - (c) that single company were related to the recipient company, if that one of the non-resident companies which actually pays the dividend is related to the recipient company,

(so that, in particular, the relevant profits for the purposes of section 799(1) is a single aggregate figure in respect of that single company and the foreign tax paid by the responsible company is foreign tax paid by that single company).

- (3) For the purposes of this section a company is related to another company if that other company—
- (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly,
- not less than 10 per cent. of the voting power in the first-mentioned company.]

#### Textual Amendments

- F146** S. 803A inserted (with effect in accordance with Sch. 30 para. 15(2) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 15(1)
- F147** S. 803A(1A) inserted (with effect in accordance with s. 90(3) of the amending Act) by Finance Act 2005 (c. 7), s. 90(2)

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**F148** S. 803A(1A) omitted (with effect in accordance with Sch. 16 para. 6 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 2(5)** (with Sch. 16 paras. 7, 8)

### *Miscellaneous rules*

## **804 Relief against income tax in respect of income arising in years of commencement.**

<sup>M21</sup>(1) Subject to the provisions of this section, credit for overseas tax paid in respect of [<sup>F149</sup>any income which is an overlap profit] shall be allowed under this Part against United Kingdom income tax chargeable for any year of assessment in respect of that income if it would have been so allowed but for the fact that credit for that overseas tax had been allowed against the United Kingdom income tax chargeable in respect of that income for a previous year of assessment.

(2) The amount of credit to be allowed in respect of any income by virtue of this section for any year of assessment shall not exceed the difference between—

- (a) the total credit allowable against income tax in respect of that income under this Part (including this section) for all years of assessment for which credit is so allowable; and
- (b) the amount of credit which was in fact so allowed in respect of that income for any earlier year or years of assessment.

(3) The total credit so allowable in respect of any income for all those years of assessment shall be taken to be the amount of the overseas tax charged on that income, adjusted where the number of the United Kingdom periods of assessment exceeds the number of foreign periods of assessment, in the proportion which the former number bears to the latter, a period for which part only of the income is charged to tax being counted not as one period but as a fraction equal to the proportion which that part of the income bears to the whole of the income.

(4) Where the same income is charged to different overseas taxes for different foreign periods of assessment, subsection (3) above, so far as it relates to the adjustment of overseas tax, shall be applied separately to each of the overseas taxes, and the total credit allowable shall be the aggregate of those taxes after the making of any adjustments in accordance with that subsection as so applied.

[<sup>F150</sup>(5) Subsections (5A) and (5B) below apply where—

- (a) credit against income tax for any year of assessment is allowed by virtue of subsection (1) above in respect of any income which is an overlap profit (“the original income”), and
- (b) the original income or any part of it contributes to an amount which, by virtue of [<sup>F151</sup>section 205 or 220 of ITTOIA 2005], is deducted in computing the profits or gains of a subsequent year of assessment (“the subsequent year”).

(5A) The following shall be set off one against the other, namely—

- (a) the difference between—
  - (i) the amount of the credit which, under this Part (including this section), has been allowed against income tax in respect of so much of the original income as contributes as mentioned in subsection (5) above, and
  - (ii) the amount of the credit which, apart from this section, would have been so allowed; and



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- (b) the amount of credit which, on the assumption that no amount were deducted by virtue of <sup>F151</sup>section 205 or 220 of ITTOIA 2005], would be allowable under this Part against income tax in respect of income arising in the subsequent year from the same source as the original income.
- (5B) The person chargeable in respect of the income (if any) arising in the subsequent year from the same source as the original income shall—
  - (a) if the amount given by paragraph (a) of subsection (5A) above exceeds that given by paragraph (b) of that subsection, <sup>F152</sup>be chargeable for that year to an amount of income tax equal to the excess<sup>F153</sup> and be liable for any tax so chargeable]; and
  - (b) if the amount given by paragraph (b) of subsection (5A) above exceeds that given by paragraph (a) of that subsection, be allowed for that year under this Part an amount of credit equal to the excess.
- (5C) For the purposes of subsections (5) to (5B) above, it shall be assumed that, where an amount is deducted by virtue of <sup>F154</sup>section 220 of ITTOIA 2005], each of the overlap profits included in the aggregate of such profits contributes to that amount in the proportion which that overlap profit bears to that aggregate.]
- (6) <sup>F155</sup> .....
- (7) Any claim for relief by way of credit under subsection (1) above against income tax for any year of assessment shall be made <sup>F156</sup>on or before the fifth anniversary of the 31st January next following] that year or, where there is more than one year of assessment in respect of which such relief may be given, <sup>F156</sup>on or before the fifth anniversary of the 31st January next following] the later of them.
- (8) In this section—
  - <sup>F157</sup>“overlap profit” means an amount of profits or gains which, by virtue of <sup>F158</sup>Chapter 15 of Part 2 of ITTOIA 2005], is included in the computations for two successive years of assessment;
  - “overseas tax” means tax under the law of a territory outside the United Kingdom;
  - <sup>F159</sup> .....
  - “United Kingdom period of assessment” and “foreign period of assessment”, in relation to any income, mean respectively a year or other period for which under the relevant law the income falls to be charged to the relevant tax;
  - <sup>F159</sup> .....
  - <sup>F160</sup> ....., and

references to income arising in any year include, in relation to income the income tax on which is to be computed by reference to the amount of income received in the United Kingdom, references to income received in that year.

**Textual Amendments**

**F149** Words in s. 804(1) substituted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), s. 217(1) (with Sch. 20 para. 12(1))

**F150** S. 804(5)-(5C) substituted for s. 804(5) (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), s. 217(2) (with Sch. 20 para. 12(1))



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- F151** Words in s. 804(5)(b)(5A)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 323\(2\)](#) (with [Sch. 2](#))
- F152** Words in s. 804(5B)(a) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 197\(2\)](#) (with [Sch. 2](#))
- F153** Words in s. 804(5B)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 323\(3\)\(b\)](#) (with [Sch. 2](#))
- F154** Words in s. 804(5C) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 323\(4\)](#) (with [Sch. 2](#))
- F155** S. 804(6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 197\(3\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F156** Words in s. 804(7) substituted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 21 para. 22](#)
- F157** S. 804(8): definition of "overlap profit" inserted (with effect in accordance with s. 218 of the amending Act) by [Finance Act 1994 \(c. 9\), s. 217\(3\)\(a\)](#) (with [Sch. 20 para. 12\(1\)](#))
- F158** S. 804(8): words in definition of "overlap profit" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 323\(5\)](#) (with [Sch. 2](#))
- F159** S. 804(8): definitions of "non-basis period" and "years of commencement" repealed (with effect in accordance with s. 218 of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 217\(3\)\(b\), Sch. 26 Pt. 5\(24\)](#), Note 7 (with [Sch. 20 para. 12\(1\)](#))
- F160** Words in s. 804(8) repealed (with effect in accordance with s. 218 of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 217\(3\)\(b\), Sch. 26 Pt. 5\(24\)](#), Note 7 (with [Sch. 20 para. 12\(1\)](#))

#### Marginal Citations

**M21** Source—1970 s.510; 1971 Sch.6 75

### [<sup>F161</sup>804ZS] Schemes and arrangements designed to increase relief

- (1) If the Board consider, on reasonable grounds, that conditions A to D are or may be satisfied in relation to any income or chargeable gain taken or to be taken into account for the purposes of determining a person's liability to tax in a chargeable period, they may give the person a notice under this section.
- (2) Condition A is that, in the case of the person, there is in respect of the income or gain an amount of foreign tax for which, under any arrangements, credit is allowable against United Kingdom tax for that chargeable period.
- (3) Condition B is that there is a scheme or arrangement the main purpose, or one of the main purposes, of which is to cause an amount of foreign tax to be taken into account in the case of the person for that chargeable period.
- (4) Condition C is that the scheme or arrangement is a prescribed scheme or arrangement.
- (5) Condition D is that the amount referred to in subsection (6) is more than a minimal amount.
- (6) The amount is the aggregate of—
  - (a) the aggregate amount of the claims for credit that the person has made, or is in a position to make, for the chargeable period; and
  - (b) for all the persons connected to that person, the aggregate amount of the claims for credit that the connected person has made, or is in a position to make, for a corresponding chargeable period.

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- (7) A chargeable period of a person (“A”) corresponds to a chargeable period of another person (“B”) if at least one day of A’s chargeable period falls within B’s chargeable period.
- (8) A notice under this section is a notice—
- (a) informing the person of the Board’s view under subsection (1),
  - (b) specifying the chargeable period in relation to which the Board formed that view,
  - (c) if the amount of foreign tax considered by the Board to satisfy condition B is an amount of underlying tax, specifying the body corporate<sup>F162</sup> . . . whose payment of foreign tax is relevant to that underlying tax, and
  - (d) informing the person that as a consequence section 804ZB has effect in relation to him.
- (9) A notice under this section may specify the adjustments of a person’s tax return that, in the view of the Board, fall to be made by him under section 804ZB(2).
- (10) The adjustments specified may, in a case where the notice given to a person specifies a body corporate resident outside the United Kingdom, include treating the body corporate as having paid or being liable to pay only so much foreign tax as would have been allowed to it as a credit if it were resident in the United Kingdom and a notice under this section had been given to it as regards an amount of foreign tax.
- (11) Schedule 28AB makes provision about what constitutes a prescribed scheme or arrangement.
- [ In this section “foreign tax” includes any tax which for the purpose of allowing credit<sup>F163</sup>(11A) under any arrangements against corporation tax is treated by section 801 as if it were tax payable under the law of any territory outside the United Kingdom.]
- (12) In this section and sections 804ZB and 804ZC “tax return” means—
- (a) a return under section 8, 8A or 12AA of the Management Act, or
  - (b) a company tax return;
- and “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to the Finance Act 1998, as read with paragraph 4 of that Schedule.]

#### Textual Amendments

**F161** Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), s. 87(1)

**F162** Words in s. 804ZA(8)(c) repealed (with effect in accordance with s. 35(4)-(7) of the repealing Act) by Finance Act 2007 (c. 11), s. 35(2), Sch. 27 Pt. 2(6), Note

**F163** S. 804ZA(11A) inserted (with effect in accordance with s. 35(4)-(7) of the amending Act) by Finance Act 2007 (c. 11), s. 35(3)

#### [<sup>F161</sup>804ZB] Effect of notice under section 804ZA

- (1) This section applies in relation to a person if—
- (a) a notice under section 804ZA has been given to the person in respect of a chargeable period specified in the notice, and

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- (b) the chargeable period specified is a chargeable period in relation to which conditions A to D of section 804ZA are satisfied.
- (2) The person must in his tax return for the period make (or must amend his return for the period so as to make) such adjustments as are necessary for counteracting the effects of the scheme or arrangement in that period that are referable to the purpose referred to in condition B of section 804ZA.]

#### Textual Amendments

**F161** Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), s. 87(1)

#### [<sup>F161</sup>804ZC] Notices under section 804ZA: further provision

- (1) Subsection (2) applies if the Board give a notice to a person under section 804ZA before the person has made his tax return for the chargeable period specified in the notice.
- (2) If the person makes a tax return for that period before the end of the period of 90 days beginning with the day on which the notice is given, he may—
  - (a) make a tax return that disregards the notice, and
  - (b) at any time after making the return and before the end of the period of 90 days, amend the return for the purpose of complying with the notice.
- (3) If a person has made a tax return for a chargeable period, the Board may only give him a notice under section 804ZA in relation to that period if a notice of enquiry has been given to him in respect of his tax return for that period.
- (4) After any enquiries into the person's tax return for that period have been completed, the Board may only give him a notice under section 804ZA in relation to that period if the requirements in subsections (5) and (7) are satisfied.
- (5) The first requirement is that at the time the enquiries were completed, the Board could not have been reasonably expected, on the basis of the information made available to them or to an officer of theirs before that time, to have been aware that the circumstances were such that a notice under section 804ZA could have been given to the person in relation to that period.
- (6) For the purposes of subsection (5)—
  - (a) section 29(6) and (7) of the Management Act (information made available) applies as it applies for the purposes of section 29(5), and
  - (b) paragraph 44(2) and (3) of Schedule 18 to the Finance Act 1998 applies as it applies for the purposes of paragraph 44(1).
- (7) The second requirement is that—
  - (a) the person was requested to produce, provide or furnish information during an enquiry into the return for that period, and
  - (b) if the person had duly complied with the request, the Board could have been reasonably expected to give the person a notice under section 804ZA in relation to that period.

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- (8) If a person is given a notice under section 804ZA in relation to a chargeable period after having made a tax return for that period, the person may amend the return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with the day on which the notice is given.
- (9) If the notice under section 804ZA is given to the person after he has been given a notice of enquiry in respect of his tax return for the period, no closure notice may be given in relation to his tax return until—
- (a) the end of the period of 90 days beginning with the day on which the notice under section 804ZA is given, or
  - (b) the earlier amendment of the return for the purpose of complying with the notice.
- (10) If the notice under section 804ZA is given to the person after any enquiries into the return for the period are completed, no discovery assessment may be made as regards the income or chargeable gain to which the notice relates until—
- (a) the end of the period of 90 days beginning with the day on which the notice under section 804ZA is given, or
  - (b) the earlier amendment of the return for the purpose of complying with the notice.
- (11) Subsections (2)(b) and (8) do not prevent a person's tax return for a chargeable period becoming incorrect if—
- (a) a notice under section 804ZA is given to the person in relation to that period,
  - (b) the return is not amended in accordance with subsection (2)(b) or (8) for the purpose of complying with the notice, and
  - (c) the return ought to have been so amended.
- (12) In this section—
- “closure notice” means a notice under—
- (a) section 28A or 28B of the Management Act, or
  - (b) paragraph 32 of Schedule 18 to the Finance Act 1998;
- “discovery assessment” means an assessment under—
- (a) section 29 of the Management Act, or
  - (b) paragraph 41 of Schedule 18 to the Finance Act 1998;
- “notice of enquiry” means a notice under—
- (a) section 9A or 12AC of the Management Act, or
  - (b) paragraph 24 of Schedule 18 to the Finance Act 1998.]

#### **Textual Amendments**

**F161** Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), s. 87(1)

[<sup>F164</sup>804A<sup>F165</sup> **Life assurance companies with overseas branches etc: restriction of credit.**]

[<sup>F166</sup>(1) Subsection (2) below applies where credit for tax—

- (a) which is payable under the laws of a territory outside the United Kingdom in respect of insurance business carried on by a company through a [<sup>F167</sup>permanent establishment] in that territory, and

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- (b) which is computed otherwise than wholly by reference to profits arising in that territory,
- is to be allowed (in accordance with this Part) against corporation tax charged under [F168]section 35 of CTA 2009 (charge on trade profits) or section 436A] in respect of the profits, computed in accordance with the provisions applicable [F169]for the purposes of section 35 of CTA 2009], of life assurance business or [F170]gross roll-up business] carried on by the company in an accounting period (in this section referred to as “the relevant profits”).
- (1A) For the purposes of paragraph (b) of subsection (1) above, the cases where tax payable under the laws of a territory outside the United Kingdom is “computed otherwise than wholly by reference to profits arising in that territory” are those cases where the charge to tax in that territory falls within subsection (1B) below.
- (1B) A charge to tax falls within this subsection if it is such a charge made otherwise than by reference to profits as (by disallowing their deduction in computing the amount chargeable) to require sums payable and other liabilities arising under policies to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the company.]
- (2) Where this subsection applies, the amount of the credit shall not exceed the greater of—
- (a) any such part of the tax payable under the laws of the territory outside the United Kingdom as is charged by reference to profits arising in that territory, and
- (b) the shareholders’ share of the tax so payable.
- (3) For the purposes of subsection (2) above the shareholders’ share of tax payable under the laws of a territory outside the United Kingdom is so much of that tax as is represented by the fraction

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

where—

[F171] A is an amount equal to the amount of the relevant profits before making any deduction authorised by subsection (5) below;] and

B is an amount equal to the excess of—

(a) the amount taken into account as receipts of the company in computing those profits, apart from premiums and sums received by virtue of a claim under a reinsurance contract, over

(b) the amounts taken into account as expenses <sup>F172</sup> . . . in computing those profits.

- (4) Where there is no such excess as is mentioned in subsection (3) above, or where the profits are greater than any excess, the whole of the tax payable under the laws of the territory outside the United Kingdom shall be the shareholders’ share; and (subject to that) where there are no profits, none of it shall be the shareholders’ share.
- (5) Where, by virtue of this section, the credit for any tax payable under the laws of a territory outside the United Kingdom is less than it otherwise would be, section 795(2) (a) shall not prevent a deduction being made for the difference in computing [F173]the relevant profits].]

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### Textual Amendments

- F164** S. 804A inserted (with effect in accordance with Sch. 7 para. 10 of the amending Act) by Finance Act 1990 (c. 29), Sch. 7 para. 5
- F165** S. 804A sidenote substituted (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by virtue of Finance Act 2000 (c. 17), Sch. 30 para. 16(5)
- F166** S. 804A(1)-(1B) substituted for s. 804A(1) (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 16(2)
- F167** Words in s. 804A(1)(a) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)
- F168** Words in s. 804A(1) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 250(a) (with Sch. 2 Pts. 1, 2)
- F169** Words in s. 804A(1) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 250(b) (with Sch. 2 Pts. 1, 2)
- F170** Words in s. 804A(1) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 48 (with Sch. 7 Pt. 2)
- F171** Words in s. 804A(3) substituted (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 16(3)
- F172** Words in s. 804A(3) repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 41 Pt. 5(3), Note
- F173** Words in s. 804A(5) substituted (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 16(4)

### [<sup>F174</sup>804B] Insurance companies carrying on more than one category of business: restriction of credit.

- (1) Where—
- (a) an insurance company carries on more than one category of [<sup>F175</sup>long-term] business in an accounting period, and
  - (b) there arises to the company in that period any income or gain (“the relevant income”) in respect of which credit for foreign tax falls to be allowed under any arrangements,
- subsection (2) below shall have effect.
- (2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable (in accordance with the provisions of sections 432ZA to 432E <sup>F176</sup> . . . ) to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with the following provisions of this section, is attributable to that category of business.
- [<sup>F177</sup>(3) Where the relevant income arises from an asset which is linked solely to a category of business, the whole of the foreign tax is attributable to that category of business, unless the case is one where subsection (7) below applies.
- (3A) Where the relevant income arises from foreign [<sup>F178</sup>business] assets, the whole of the foreign tax is attributable to gross roll-up business, unless the case is one where subsection (7) below applies.]
- (4) Where subsection (3) above does not apply and the category of business in question is—
- (a) basic life assurance and general annuity business, or



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- (b) [<sup>F179</sup>PHI] business,  
the fraction of the foreign tax that is attributable to that category of business is the fraction whose numerator is the part of the relevant income which is referable to that category by virtue of any provision of section 432A <sup>F180</sup> . . . and whose denominator is the whole of the relevant income.
- (5) Subsections (6) and (7) below apply where the category of business in question is [<sup>F181</sup>gross roll-up business.]
- (6) Where—
- (a) subsection (3) above does not apply, and
- (b) some or all of the relevant income is taken into account in accordance with section 83 of the <sup>M22</sup>Finance Act 1989 in an account in relation to which the provisions of section 432C <sup>F182</sup> . . . apply,  
the fraction of the foreign tax that is attributable to [<sup>F183</sup>gross roll-up business] is the fraction whose numerator is the part of the relevant income which is referable to [<sup>F183</sup>gross roll-up business] by virtue of any provision of section 432C <sup>F182</sup> . . . and whose denominator is the whole of the relevant income.
- (7) Where some or all of the relevant income falls to be taken into account in determining in accordance with section 83(2) of the Finance Act 1989 the amount referred to in section 432E(1) as the net amount, the fraction of the foreign tax that is attributable to [<sup>F184</sup>gross roll-up business] is the fraction—
- (a) whose numerator is the part of [<sup>F185</sup>the investment income taken into account in that determination which would be referable to [<sup>F186</sup>gross roll-up business] by virtue of section 432E if the investment income were the only amount included in the net amount]; and
- (b) whose denominator is the whole of that [<sup>F187</sup>investment income].
- <sup>F188</sup>(7A) [The Treasury may by regulations amend subsection (7) above; and the regulations may include amendments having effect in relation to accounting periods during which they are made.]
- (8) No part of the foreign tax is attributable to any category of business except as provided by subsections (3) to (7) above.
- <sup>F189</sup>(9) [Where for the purposes of this section an amount of foreign tax is attributable to gross roll-up business, credit in respect of the foreign tax so attributable shall be allowed only against corporation tax in respect of profits chargeable under section 436A.]

#### Textual Amendments

- F174** S. 804B inserted (with effect in accordance with Sch. 30 para. 17(2) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 17(1)
- F175** Words in s. 804B(1)(a) inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(2) (with Sch. 7 Pt. 2)
- F176** Words in s. 804B(2) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(3), Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)
- F177** S. 804B(3)(3A) substituted for s. 804B(3) (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(4) (with Sch. 7 Pt. 2)
- F178** Word in s. 804B(3A) substituted (with effect in accordance with Sch. 17 para. 10(6)(7) of the amending Act) by Finance Act 2008 (c. 9), Sch. 17 para. 10(3)(e)

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- F179** Words in s. 804B(4)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 49(5)(a)** (with Sch. 7 Pt. 2)
- F180** Words in s. 804B(4) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(5)(b), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F181** Words in s. 804B(5) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 49(6)** (with Sch. 7 Pt. 2)
- F182** Words in s. 804B(6) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(7)(a), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F183** Words in s. 804B(6) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 49(7)(b)** (with Sch. 7 Pt. 2)
- F184** Words in s. 804B(7) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 49(8)(a)** (with Sch. 7 Pt. 2)
- F185** Words in s. 804B(7)(a) substituted (with effect in accordance with Sch. 33 para. 11(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 11(1)(a)**
- F186** Words in s. 804B(7)(a) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 49(8)(b)** (with Sch. 7 Pt. 2)
- F187** Words in s. 804B(7)(b) substituted (with effect in accordance with Sch. 33 para. 11(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 11(1)(b)**
- F188** S. 804B(7A) inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 7**
- F189** S. 804B(9) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 49(9)** (with Sch. 7 Pt. 2)

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

- C35** S. 804B modified (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30C** (as inserted by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1, 6**; and as amended by S.I. 2004/822, **regs. 1, 25**)
- C36** S. 804B modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1), 23** (as amended by: S.I. 2007/2134, **regs. 1(1)(2), 22**; S.I. 2008/1937, **regs. 1(1)(2), 10**)

#### Marginal Citations

- M22** 1989 c. 26.

### [<sup>F191</sup>804C] Insurance companies: allocation of expenses etc in computations under [<sup>F190</sup>section 35 of CTA 2009].

- (1) Where—
- (a) an insurance company carries on any category of insurance business in a period of account,
  - (b) a computation in accordance with the provisions applicable [<sup>F192</sup>for the purposes of section 35 of CTA 2009 (charge on trade profits)] falls to be made in relation to that category of business for that period, and
  - (c) there arises to the company in that period any income or gain in respect of which credit for foreign tax falls to be allowed under any arrangements,
- subsection (2) below shall have effect.
- (2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is to be allowed against corporation tax in respect of so much of that income or gain as is referable to the category of business concerned (“the relevant income”) shall be limited by treating the amount of the relevant income as reduced in accordance with subsections (3) and (4) below.

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- (3) The first limitation is to treat the amount of the relevant income as reduced (but not below nil) for the purposes of this Chapter by the amount of expenses (if any) attributable to the relevant income.
- (4) If—
- (a) the amount of the relevant income after any reduction under subsection (3) above,  
exceeds
  - (b) the relevant fraction of the profits of the category of business concerned for the period of account in question which are chargeable to corporation tax,
- the second limitation is to treat the [<sup>F193</sup>relevant income] as further reduced (but not below nil) for the purposes of this Chapter to an amount equal to that fraction of those profits.
- In this subsection any reference to the profits of a category of business is a reference to those profits after the set off of any losses of that category of business which have arisen in any previous accounting period.
- (5) In determining the amount of the credit for foreign tax which is to be allowed as mentioned in subsection (2) above, the [<sup>F193</sup>relevant income] shall not be reduced except in accordance with that subsection.
- (6) For the purposes of subsection (3) above, the amount of expenses attributable to the relevant income is the appropriate fraction of the total relevant expenses of the category of business concerned for the period of account in question.
- (7) In subsection (6) above, the “appropriate fraction” means the fraction—
- (a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above, and
  - (b) whose denominator is the total income of the category of business concerned for the period of account in question,
- unless the denominator so determined is nil, in which case the denominator shall instead be the amount described in subsection (8) below.
- (8) That amount is so much in total of the income and gains—
- (a) which arise to the company in the period of account in question, and
  - (b) in respect of which credit for foreign tax falls to be allowed under any arrangements,
- as are referable to the category of business concerned (before any reduction in accordance with subsection (2) above).
- (9) In subsection (4) above, the “relevant fraction” means the fraction—
- (a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above; and
  - (b) whose denominator is the amount described in subsection (8) above.
- (10) Where a 75 per cent subsidiary of an insurance company is acting in accordance with a scheme or arrangement and—
- (a) the purpose, or one of the main purposes, of that scheme or arrangement is to prevent or restrict the application of subsection (2) above to the insurance company, and
  - (b) the subsidiary does not carry on insurance business of any description,

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the amount of corporation tax attributable (apart from this subsection) to any item of income or gain arising to the subsidiary shall be found by setting off against that item the amount of expenses that would be attributable to it under subsection (3) above if that item had arisen directly to the insurance company.

- (11) Where the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is, by virtue of subsection (2) above, less than it would be if the relevant income were not treated as reduced in accordance with that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the profits of the category of business concerned.
- (12) Where, by virtue of subsection (10) above, the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is less than it would be apart from that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the income of the 75 per cent subsidiary.
- [<sup>F194</sup>(13) For the purposes of the operation of this section in relation to any income or gain in respect of which credit falls to be allowed under any arrangements, the amount of the income or gain that is referable to a category of insurance business is the same fraction of the income and gain as the fraction of the foreign tax that is attributable to that category of business in accordance with section 804B.]
- (14) This section shall be construed—
- (a) in accordance with section 804D, where the category of business concerned is life assurance business or [<sup>F195</sup>gross roll-up business]; and
  - (b) in accordance with section 804E, where the category of business concerned is not life assurance business or [<sup>F196</sup>gross roll-up business].]

#### Textual Amendments

- F190** Words in s. 804C heading substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [Sch. 1 para. 251\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F191** Ss. 804C-804E inserted (with effect in accordance with [Sch. 30 para. 18\(4\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 30 para. 18\(1\)](#)
- F192** Words in s. 804C(1)(b) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [Sch. 1 para. 251\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F193** Words in s. 804C(4)(5) substituted (with effect in accordance with [Sch. 33 para. 11\(5\)](#) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 11\(3\)](#)
- F194** S. 804C(13) substituted (with effect in accordance with [Sch. 33 para. 11\(5\)](#) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 11\(4\)](#)
- F195** Words in s. 804C(14)(a) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 50\(a\)](#) (with [Sch. 7 Pt. 2](#))
- F196** Words in s. 804C(14)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 50\(b\)](#) (with [Sch. 7 Pt. 2](#))

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

- C37** S. 804C modified by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), [reg. 52A\(6\)-\(9\)](#) (as substituted (1.1.2009 with effect in accordance with reg. 1(2) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) \(Amendment No. 3\) Regulations 2008 \(S.I. 2008/3159\)](#), [regs. 1\(1\), 16](#))

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## **[<sup>F191</sup>804D] Interpretation of section 804C in relation to life assurance business etc.**

- (1) This section has effect for the interpretation of section 804C where the category of business concerned is life assurance business or [<sup>F197</sup>gross roll-up business].
- (2) The “total income” of the category of business concerned for the period of account in question is the amount (if any) by which—
  - (a) so much of the total income shown in the revenue account in the periodical return of the company concerned for that period as is referable to that category of business,  
exceeds
  - (b) so much of any commissions payable and any expenses of management incurred in connection with the acquisition of the business, as shown in that return, so far as referable to that category of business.
- (3) Where any amounts fall to be brought into account in accordance with section 83 of the <sup>M23</sup>Finance Act 1989, the amounts that are referable to the category of business concerned shall be determined for the purposes of subsection (2) above in accordance with sections 432B to [<sup>F198</sup>432G].
- (4) The “total relevant expenses” of the category of business concerned for any period of account is the amount of the claims incurred—
  - (a) increased by any increase in the liabilities of the company, or
  - (b) reduced (but not below nil) by any decrease in the liabilities of the company.
- (5) For the purposes of subsection (4) above, the amounts to be taken into account in the case of any period of account are the amounts as shown in the company’s periodical return for the period so far as referable to the category of business concerned.]

### **Textual Amendments**

- F191** Ss. 804C-804E inserted (with effect in accordance with Sch. 30 para. 18(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 18(1)**
- F197** Words in s. 804D(1) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 51(2)** (with Sch. 7 Pt. 2)
- F198** Words in s. 804D(3) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 51(3)** (with Sch. 7 Pt. 2)

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

- C38** S. 804D modified (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30D** (as inserted by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1, 6**; and as amended by S.I. 2004/822, **regs. 1, 26**)
- C39** S. 804D modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1), 24**

### **Marginal Citations**

- M23** 1989 c. 26.

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**[<sup>F191</sup>804E] Interpretation of section 804C in relation to other insurance business.**

- (1) This section has effect for the interpretation of section 804C where the category of business concerned is not life assurance business or [<sup>F199</sup>gross roll-up business].
- (2) The “total income” of the category of business concerned for any period of account is the amount (if any) by which—
  - (a) the sum of the amounts specified in subsection (3) below, exceeds
  - (b) the sum of the amounts specified in subsection (4) below.
- (3) The amounts mentioned in subsection (2)(a) above are—
  - (a) earned premiums, net of reinsurance;
  - (b) investment income and gains;
  - (c) other technical income, net of reinsurance;
  - (d) <sup>F200</sup> .....
- (4) The amounts mentioned in subsection (2)(b) above are—
  - (a) acquisition costs;
  - (b) the change in deferred acquisition costs;
  - (c) losses on investments.
- (5) The “total relevant expenses” of the category of business concerned for any period of account is the sum of—
  - (a) the claims incurred, net of reinsurance,
  - (b) the changes in other technical provisions, net of reinsurance,
  - (c) the change in the equalisation provision, and
  - (d) investment management expenses,
 unless that sum is a negative amount, in which case the total relevant expenses shall be taken to be nil.
- (6) The amounts to be taken into account for the purposes of the paragraphs of subsections (3) to (5) above are the amounts taken into account for the purposes of corporation tax.
- (7) Expressions used—
  - (a) in the paragraphs of subsections (3) to (5) above, and
  - [<sup>F201</sup>(b) in the provisions of section B of Part 1 of Schedule 3 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (the required formats) which relate to the profit and loss account format (within the meaning of sub-paragraphs (1) and (2) of paragraph 1 of that Schedule),]
 have the same meaning in those paragraphs as they have in those provisions.]

**Textual Amendments**

**F191** Ss. 804C-804E inserted (with effect in accordance with [Sch. 30 para. 18\(4\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 30 para. 18\(1\)](#)

**F199** Words in s. 804E(1) substituted (with effect in accordance with [s. 38\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 52](#) (with [Sch. 7 Pt. 2](#))

**F200** S. 804E(3)(d) repealed (with effect in accordance with [Sch. 11](#) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(11\)](#), Note



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**F201** S. 804E(7)(b) substituted (6.4.2008 with effect in accordance with art. 1(2) of the amending S.I.) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), **arts. 1(1), 12**

[<sup>F202</sup>**804F Interpretation of sections 804A to 804E.**

<sup>F203</sup> .....]

**Textual Amendments**

**F202** S. 804F inserted (with effect in accordance with Sch. 30 para. 19(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 19(1)**

**F203** S. 804F repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 10 para. 14(2)(e), **Sch. 27 Pt. 2(10)**, Note

[<sup>F204</sup>**804G Reduction in credit: payment by reference to foreign tax**

- (1) This section applies if—
  - (a) credit for foreign tax falls to be allowed to a person (“P”) under any arrangements, and
  - (b) a payment is made by a tax authority to P, or any person connected with P, by reference to the foreign tax.
- (2) The amount of that credit is to be reduced by an amount equal to that payment.
- (3) Section 839 applies for the purposes of determining whether or not a person is connected with P.]

**Textual Amendments**

**F204** S. 804G inserted (with effect in accordance with s. 59(13) of the amending Act) by Finance Act 2009 (c. 10), **s. 59(2)**

**805 Elections against credit.**

<sup>M24</sup>Credit shall not be allowed under any arrangements against the United Kingdom taxes chargeable in respect of any income or chargeable gains of any person if he elects that credit shall not be allowed in respect of that income or those gains

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

**C40** See s.732(4)—dealers in securities.

**C41** Ss. 805, 806 applied (31.12.2006 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Lloyd’s Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **regs. 1(1), 4**

**Marginal Citations**

**M24** Source—1970 s.511; 1972 s.100(1)

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## 806 Time limit for claims etc.

- [<sup>F205</sup>(1) Subject to subsection (2) below and section 804(7), any claim for an allowance under any arrangements by way of credit for foreign tax in respect of any income or chargeable gain—
- (a) shall, in the case of any income or chargeable gain which falls to be charged to income tax for a year of assessment, be made on or before—
    - (i) the fifth anniversary of the 31st January next following that year of assessment, or
    - (ii) if later, the 31st January next following the year of assessment in which the foreign tax is paid;
  - (b) shall, in the case of any income or chargeable gain which falls to be charged to corporation tax for an accounting period, be made not more than—
    - (i) six years after the end of that accounting period, or
    - (ii) if later, one year after the end of the accounting period in which the foreign tax is paid.]

(2) Where the amount of any credit given under the arrangements [<sup>F206</sup>is reduced under section 804G, or] is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the laws of any other territory, nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim [<sup>F207</sup>to which the reduction or adjustment gives rise], being an assessment or claim made not later than six years from the time when [<sup>F208</sup>all such assessments, reductions, adjustments] and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what credit falls to be given.

[<sup>F209</sup>(3) Subject to subsection (5) below, where—

    - (a) any credit for foreign tax has been allowed to a person under any arrangements, and
    - (b) the amount of that credit is subsequently [<sup>F210</sup>reduced under section 804G or] rendered excessive by reason of an adjustment of the amount of any tax payable under the laws of a territory outside the United Kingdom,

that person shall give notice in writing to an officer of the Board that [<sup>F211</sup>a reduction has been made or that] an adjustment has been made that has rendered the amount of the credit excessive.

(4) A notice under subsection (3) above must be given within one year from the time of the making of [<sup>F212</sup>the reduction or adjustment].

(5) Subsections (3) and (4) above do not apply where [<sup>F212</sup>the reduction or adjustment] is one the consequences of which in relation to the credit fall to be given effect to in accordance with regulations made under—

    - (a) section 182(1) of the <sup>M25</sup>Finance Act 1993 (regulations relating to individual members of Lloyd's); or
    - (b) section 229 of the <sup>M26</sup>Finance Act 1994 (regulations relating to corporate members of Lloyd's).

(6) A person who fails to comply with the requirements imposed on him by subsections (3) and (4) above in relation to [<sup>F213</sup>any reduction or adjustment] shall be liable to a penalty of an amount not exceeding the amount by which the credit allowed [<sup>F214</sup>has been reduced or] has been rendered excessive by reason of the adjustment.]

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### Textual Amendments

- F205** S. 806(1) substituted (with effect in accordance with [Sch. 30 para. 20\(3\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 30 para. 20(2)**
- F206** Words in s. 806(2) inserted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **s. 59(4)(a)**
- F207** Words in s. 806(2) substituted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **s. 59(4)(b)**
- F208** Words in s. 806(2) substituted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **s. 59(4)(c)**
- F209** S. 806(3)-(6) inserted (17.3.1998 with effect in accordance with s. 107(2) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **s. 107(1)**
- F210** Words in s. 806(3)(b) inserted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **s. 59(5)(a)**
- F211** Words in s. 806(3) inserted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **s. 59(5)(b)**
- F212** Words in s. 806(4)(5) substituted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **s. 59(6)**
- F213** Words in s. 806(6) substituted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **s. 59(7)(a)**
- F214** Words in s. 806(6) inserted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **s. 59(7)(b)**

### Modifications etc. (not altering text)

- C42** See s.448—*overseas life assurance companies*.
- C43** Ss. 805, 806 applied (31.12.2006 with effect in accordance with reg. 1(2) of the affecting S.I.) by [The Lloyd's Underwriters \(Double Taxation Relief\) \(Corporate Members\) Regulations 2006 \(S.I. 2006/3262\)](#), **regs. 1(1), 4**

### Marginal Citations

- M25** 1993 c. 34.
- M26** 1994 c. 9.

*[<sup>F215</sup> Foreign dividends: onshore pooling and utilisation of eligible unrelieved foreign tax*

### Textual Amendments

- F215** Ss. 806A-806H, 806J and cross-heading inserted (with effect in accordance with [Sch. 30 para. 21\(2\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 30 para. 21(1)**

## 806A Eligible unrelieved foreign tax on dividends: introductory.

**F216** .....

### Textual Amendments

- F216** Ss. 806A-806K omitted (with effect in accordance with Sch. 14 para. 31 of the repealing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), **Sch. 14 para. 9** (subject to amendment to s. 806A by: [Corporation](#)

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Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 114 (with [Sch. 2](#)); Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 20 (with [Sch. 9](#))

**806B The amounts that are eligible unrelieved foreign tax.**

F217 .....

**Textual Amendments**

**F217** Ss. 806A-806K omitted (with effect in accordance with Sch. 14 para. 31 of the repealing Act) by virtue of Finance Act 2009 (c. 10), [Sch. 14 para. 9](#) (subject to amendment to s. 806B by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 21 (with [Sch. 9](#)))

**806C Onshore pooling.**

F218 .....

**Textual Amendments**

**F218** Ss. 806A-806K omitted (with effect in accordance with Sch. 14 para. 31 of the repealing Act) by virtue of Finance Act 2009 (c. 10), [Sch. 14 para. 9](#) (subject to amendment to s. 806C by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 22 (with [Sch. 9](#)))

**806D Utilisation of eligible unrelieved foreign tax.**

F219 .....

**Textual Amendments**

**F219** Ss. 806A-806K omitted (with effect in accordance with Sch. 14 para. 31 of the repealing Act) by virtue of Finance Act 2009 (c. 10), [Sch. 14 para. 9](#) (subject to amendment to s. 806D by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 23 (with [Sch. 9](#)))

**806E Rules for carry back of relievable tax under section 806D.**

F220 .....

**Textual Amendments**

**F220** Ss. 806A-806K omitted (with effect in accordance with Sch. 14 para. 31 of the repealing Act) by virtue of Finance Act 2009 (c. 10), [Sch. 14 para. 9](#)

**806F Credit to be given for underlying tax before other foreign tax etc.**

F221 .....

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**Textual Amendments**

**F221** Ss. 806A-806K omitted (with effect in accordance with Sch. 14 para. 31 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 14 para. 9** (subject to amendment to s. 806F by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 24 (with **Sch. 9**))

**806G Claims for the purposes of section 806D(4) or (5).**

**F222** .....

**Textual Amendments**

**F222** Ss. 806A-806K omitted (with effect in accordance with Sch. 14 para. 31 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 14 para. 9** (subject to amendment to s. 806G by Finance Act 2008 (c. 9), s. 118(2), **Sch. 39 para. 25**; S.I. 2009/403, **arts. 2(2), 10**)

**806H Surrender of relievable tax by one company in a group to another.**

**F223** .....

**Textual Amendments**

**F223** Ss. 806A-806K omitted (with effect in accordance with Sch. 14 para. 31 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 14 para. 9**

**806J Interpretation of foreign dividend provisions of this Chapter.**

**F224** .....]

**Textual Amendments**

**F224** Ss. 806A-806K omitted (with effect in accordance with Sch. 14 para. 31 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 14 para. 9** (subject to amendment to s. 806J by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 25 (with **Sch. 9**))

*[<sup>F225</sup> Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere*

**Textual Amendments**

**F225** S. 806K and cross-heading inserted (with effect in accordance with Sch. 30 para. 22(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 22(1)**

**806K Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere.**

**F226** .....]

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### Textual Amendments

**F226** Ss. 806A-806K omitted (with effect in accordance with Sch. 14 para. 31 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 14 para. 9**

*f<sup>F227</sup> Unrelieved foreign tax: profits of overseas branch or agency*

### Textual Amendments

**F227** Ss. 806L, 806M and cross-heading inserted (with effect in accordance with Sch. 30 para. 23(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 23(1)**

## **806L Carry forward or carry back of unrelieved foreign tax.**

- (1) This section applies where, in any accounting period of a company resident in the United Kingdom, an amount of unrelieved foreign tax arises in respect of any of the company's qualifying income from an overseas [<sup>F228</sup>permanent establishment] of the company.
- (2) The amount of the unrelieved foreign tax so arising shall be treated for the purposes of allowing credit relief under this Part as if it were foreign tax paid in respect of, and computed by reference to, the company's qualifying income from the same overseas [<sup>F228</sup>permanent establishment]—
  - (a) in the next accounting period (whether or not the company in fact has any such income from that source in that accounting period), or
  - (b) in such one or more preceding accounting periods, beginning not more than three years before the accounting period in which the unrelieved foreign tax arises, as result from applying the rules in subsection (3) below,
 or partly in the one way and partly in the other.
- (3) Where any unrelieved foreign tax is to be treated as mentioned in paragraph (b) of subsection (2) above, the rules for determining the accounting periods in question (and the amount of the unrelieved foreign tax to be so treated in relation to each of them) are that the unrelieved foreign tax must be so treated under that paragraph—
  - (1) that—
    - (a) credit for, or for any remaining balance of, the unrelieved foreign tax is allowed against corporation tax in respect of income of a later one of the accounting periods beginning as mentioned in that paragraph, before
    - (b) credit for any of the unrelieved foreign tax is allowed against corporation tax in respect of income of any earlier such period;
  - (2) that, before allowing credit for any of the unrelieved foreign tax against corporation tax in respect of income of any accounting period, credit for foreign tax is allowed—
    - (a) first for foreign tax in respect of the income of that accounting period, other than unrelieved foreign tax arising in another accounting period; and
    - (b) then for unrelieved foreign tax arising in any accounting period before that in which the unrelieved foreign tax in question arises.



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- (4) For the purposes of this section, the cases where an amount of unrelieved foreign tax arises in respect of any of a company's qualifying income from an overseas <sup>F228</sup>permanent establishment] in an accounting period are those cases where—
- (a) the amount of the credit for foreign tax which under any arrangements would, apart from section 797, be allowable against corporation tax in respect of that income,  
  
exceeds
  - (b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of that income;
- and in any such case that excess is the amount of the unrelieved foreign tax in respect of that income.
- (5) For the purposes of this section, a company's qualifying income from an overseas <sup>F228</sup>permanent establishment] is the profits of the overseas <sup>F228</sup>permanent establishment] which are—
- <sup>F229</sup>(a) profits, chargeable under Chapter 2 of Part 3 of CTA 2009, of a trade carried on partly, but not wholly, outside the United Kingdom; or]
  - <sup>F230</sup>(b) included in the profits of gross roll-up business chargeable under <sup>F231</sup> . . . section 436A.]
- (6) Where (whether by virtue of this subsection or otherwise) an amount of unrelieved foreign tax arising in an accounting period falls to be treated under subsection (2) above for the purposes of allowing credit relief under this Part as foreign tax paid in respect of, and computed by reference to, qualifying income of an earlier accounting period, it shall not be so treated for the purpose of any further application of this section.
- <sup>F232</sup>(7) In this section—
- “overseas permanent establishment” means a permanent establishment through which a company carries on a trade in a territory outside the United Kingdom; and
  - “permanent establishment”—
- (a) if there are arrangements having effect under section 788 in relation to the territory concerned that define the expression, has the meaning given by those arrangements, and
  - (b) if there are no such arrangements, or if they do not define the expression, has the meaning given by section 148 of the Finance Act 2003.]

#### Textual Amendments

- F228** Words in s. 806L(1)(2)(4)(5) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)
- F229** S. 806L(5)(a) and word substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 255(a) (with Sch. 2 Pts. 1, 2)
- F230** S. 806L(5)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 53 (with Sch. 7 Pt. 2)
- F231** Words in s. 806L(5)(b) repealed (1.4.2009 with effect in accordance with s. 1329(1) of the repealing Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 255(b), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)
- F232** S. 806L(7) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 27 para. 1(3)

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### 806M Provisions supplemental to section 806L.

- (1) This section has effect for the purposes of section 806L and shall be construed as one with that section.
- (2) If, in any accounting period, a company ceases to have a particular overseas [<sup>F233</sup>permanent establishment], the amount of any unrelieved foreign tax which arises in that accounting period in respect of the company's income from that overseas [<sup>F233</sup>permanent establishment] shall, to the extent that it is not treated as mentioned in section 806L(2)(b), be reduced to nil (so that no amount arises which falls to be treated as mentioned in section 806L(2)(a)).
- (3) If a company—
  - (a) at any time ceases to have a particular overseas [<sup>F233</sup>permanent establishment] in a particular territory (“the old [<sup>F233</sup>permanent establishment]”), but
  - (b) subsequently again has an overseas [<sup>F233</sup>permanent establishment] in that territory (“the new [<sup>F233</sup>permanent establishment]”),
 the old [<sup>F233</sup>permanent establishment] and the new [<sup>F233</sup>permanent establishment] shall be regarded as different overseas [<sup>F233</sup>permanent establishments].
- (4) If, under the law of a territory outside the United Kingdom, tax is charged in the case of a company resident in the United Kingdom in respect of the profits of two or more of its overseas [<sup>F233</sup>permanent establishments] in that territory, taken together, then, for the purposes of—
  - (a) section 806L, and
  - (b) subsection (3) above,
 those overseas [<sup>F233</sup>permanent establishments] shall be treated as if they together constituted a single overseas [<sup>F233</sup>permanent establishment] of the company.
- (5) Unrelieved foreign tax arising in respect of qualifying income from a particular overseas [<sup>F233</sup>permanent establishment] in any accounting period shall only be treated as mentioned in subsection (2) of section 806L on a claim.
- (6) Any such claim must specify the amount (if any) of the unrelieved foreign tax—
  - (a) which is to be treated as mentioned in paragraph (a) of that subsection; and
  - (b) which is to be treated as mentioned in paragraph (b) of that subsection.
- (7) A claim under subsection (5) above may only be made before the expiration of the period of—
  - (a) six years after the end of the accounting period mentioned in that subsection, or
  - (b) if later, one year after the end of the accounting period in which the foreign tax in question is paid.]

#### Textual Amendments

**F233** Words in s. 806M(2)-(5) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)

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## CHAPTER III

### MISCELLANEOUS PROVISIONS

#### 807 Sale of securities with or without accrued interest.

<sup>M27</sup>(1) In any case where—

- (a) a person is treated under [<sup>F234</sup>section 628(5) of ITA 2007 as making accrued income profits in an interest period]; and
- (b) assuming that, in the [<sup>F235</sup>tax year in which the accrued income profits are treated as made by virtue of section 617(2) of that Act], he were to become entitled to any interest on the securities concerned, he would be liable in respect of the interest to tax chargeable under [<sup>F236</sup>ITTOIA 2005 on relevant foreign income]; and
- (c) he is liable under the law of a territory outside the United Kingdom to tax in respect of interest payable on the securities at the end of the interest period or he would be so liable if he were entitled to that interest,

credit of an amount equal to the relevant proportion of the [<sup>F237</sup>accrued income profits] shall be allowed against any United Kingdom income tax <sup>F238</sup> . . . computed by reference to the [<sup>F237</sup>accrued income profits], and shall be treated as if it were allowed under section 790(4).

In this subsection the relevant proportion is the rate of tax to which the person is or would be liable as mentioned in paragraph (c) above.

(2) In any case where—

- (a) a person is entitled to credit against United Kingdom tax under section 790(4) or any corresponding provision of arrangements under section 788; and
- (b) the tax is computed by reference to income consisting of interest which falls due on securities at the end of an interest period and [<sup>F239</sup>as respects which the person is entitled to an exemption from liability to income tax under section 679 of ITA 2007];

then the amount of that credit shall be a proportion of the amount it would be apart from this subsection, and the proportion is to be found by applying the formula—

$$\frac{I - R}{I}$$

where—

*I* is the amount of the interest; and

[<sup>F240</sup>*R* is the amount of the exemption].

- (3) <sup>M28</sup>Where the person entitled to the credit is an individual, subsection (2) above does not apply unless the interest arises from securities to which the person either became or ceased to be entitled during the interest period.
- (4) Where section 811(1) applies to any income and, if credit were allowable in respect of it the credit would be reduced by virtue of subsection (2) above, section 811(1) shall have effect in relation to the income as if the reference to any sum paid in respect of tax on it were a reference to the amount which would be the amount of the credit if it were allowable and subsection (2) above applied.

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[<sup>F241</sup>(5) Expressions used in this section and in Chapter 2 of Part 12 of ITA 2007 (accrued income profits) have the same meaning as in that Chapter.]

[<sup>F242</sup>(6) <sup>F243</sup>.....]

#### Textual Amendments

- F234** Words in s. 807(1)(a) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **Sch. 1 para. 198(2)** (with [Sch. 2](#))
- F235** Words in s. 807(1)(b) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **Sch. 1 para. 198(3)** (with [Sch. 2](#))
- F236** Words in s. 807(1)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 325** (with [Sch. 2](#))
- F237** Words in s. 807(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **Sch. 1 para. 198(4)(a)** (with [Sch. 2](#))
- F238** Words in s. 807(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 198\(4\)\(b\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F239** Words in s. 807(2)(b) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **Sch. 1 para. 198(5)** (with [Sch. 2](#))
- F240** Words in s. 807(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **Sch. 1 para. 198(6)** (with [Sch. 2](#))
- F241** S. 807(5) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **Sch. 1 para. 198(7)** (with [Sch. 2](#))
- F242** S. 807(6) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 14 para. 45** (with [Sch. 15](#))
- F243** S. 807(6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 198\(8\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

#### Marginal Citations

- M27** Source—1985 Sch.23 37
- M28** Source—1988 Sch.23 38(1)-(3)

[<sup>F244</sup>**807A** Disposals and acquisitions of company loan relationships with or without interest.

- (1) This Part shall have effect for the purposes of corporation tax in relation to any company as if tax falling within subsection (2) below were to be disregarded.
- (2) [<sup>F245</sup>Subject to subsection (2A) below,] tax falls within this subsection in relation to a company to the extent that it is—
- (a) tax under the law of a territory outside the United Kingdom; and
  - (b) is attributable, on a just and reasonable apportionment,
    - [ to interest accruing under a loan relationship at a time when the <sup>F246</sup>(i) company is not a party to the relationship [<sup>F247</sup>; or
    - (ii) to so much of a [<sup>F248</sup>relevant payment] as, on such an apportionment, is attributable to a time when the company is not a party to [<sup>F249</sup>the derivative contract concerned]].

[ Tax attributable to interest accruing to a company under a loan relationship does not <sup>F250</sup>(2A) fall within subsection (2) above if—

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- (a) at the time when the interest accrues, that company has ceased to be a party to that relationship by reason of having made the initial transfer under or in accordance with any repo or stock-lending arrangements relating to that relationship; and
- (b) that time falls during the period for which those arrangements have effect.]

<sup>F252</sup> .....]  
<sup>F251</sup>(2B)

- (3) <sup>F253</sup> .....
- (4) <sup>F254</sup> .....
- (5) <sup>F255</sup> .....
- (6) <sup>F255</sup> .....

[ In this section “repo or stock-lending arrangements” means—

- <sup>F256</sup>[<sup>F257</sup>(6A) (a) a debtor repo within the meaning of [<sup>F258</sup>Chapter 10 of Part 6 of CTA 2009 (see section 548 of that Act)], or
- (b) a stock lending arrangement within the meaning of section 263B of the 1992 Act.

(6B) In any case where a debtor repo within the meaning of that paragraph constitutes the repo or stock-lending arrangements—

- (a) a reference in this section, in relation to those arrangements, to the initial transfer is to the sale mentioned in condition C of that paragraph; and
- (b) a reference in this section, in relation to those arrangements, to the period for which they have effect is to the period from the making of the initial transfer until the earlier of the time when the subsequent purchase mentioned in condition D of that paragraph takes place and the time when it becomes apparent that that subsequent purchase will not take place.

(6C) In any case where a stock lending arrangement within the meaning of section 263B of the 1992 Act constitutes the repo or stock-lending arrangements—

- (a) a reference in this section, in relation to those arrangements, to the initial transfer is to the transfer mentioned in subsection (1)(a) of that section; and
- (b) a reference in this section, in relation to those arrangements, to the period for which they have effect is to the period from the making of the initial transfer until the earlier of the time when the transfer mentioned in subsection (1)(b) of that section takes place and the time when it becomes apparent that that transfer will not take place.]]

(7) In this section—

<sup>F259</sup> .....

[<sup>F260</sup>“relevant payment” means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in a derivative contract, for a period so specified, a rate the value of which at all times is the same as that of a rate of interest so specified;]

[<sup>F261</sup><sup>F262</sup> ..... ] and  
<sup>F259</sup> .....

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### Textual Amendments

- F244** S. 807A inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 46** (with Sch. 15)
- F245** Words in s. 807A(2) inserted (with effect in accordance with s. 91(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 91(2)**
- F246** Words in s. 807A(2)(b) renumbered as s. 807A(2)(b)(i) (with effect in accordance with Sch. 30 para. 24(4) of the amending Act) by virtue of Finance Act 2000 (c. 17), **Sch. 30 para. 24(2)**
- F247** S. 807A(2)(b)(ii) and preceding word inserted (with effect in accordance with Sch. 30 para. 24(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 24(2)**
- F248** Words in s. 807A(2)(b)(ii) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 12(2)(a)** (with Sch. 28)
- F249** Words in s. 807A(2)(b)(ii) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 12(2)(b)** (with Sch. 28)
- F250** S. 807A(2A) inserted (with effect in accordance with s. 91(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 91(3)**
- F251** S. 807A(2B) inserted (with effect in accordance with Sch. 7 para. 5(3) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 5(2)**
- F252** S. 807A(2B) omitted (22.4.2009) by virtue of Finance Act 2009 (c. 10), Sch. 24 paras. 9(a), **12**
- F253** S. 807A(3) omitted (with effect in accordance with Sch. 22 para. 2(3) of the repealing Act) by virtue of Finance Act 2008 (c. 9), **Sch. 22 para. 2(1)**
- F254** S. 807A(4)(5)(b) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 10 para. 16(3)(g), **Sch. 27 Pt. 2(10)**, Note
- F255** S. 807A(5)(6) omitted (with effect in accordance with Sch. 22 para. 2(3) of the repealing Act) by virtue of Finance Act 2008 (c. 9), **Sch. 22 para. 2(2)(a)**
- F256** S. 807A(6A) inserted (19.3.1997) by Finance Act 1997 (c. 16), **s. 91(5)**
- F257** S. 807A(6A)-(6C) substituted for s. 807A(6A) (with effect in accordance with S.I. 2007/2483, **art. 4**) by Finance Act 2007 (c. 11), **Sch. 14 para. 10**
- F258** Words in s. 807A(6A) substituted (1.4.2009) with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 256(3)** (with Sch. 2 Pts. 1, 2)
- F259** S. 807A(7): definitions of "related transaction" and "trading credit" omitted (with effect in accordance with Sch. 22 para. 2(3) of the repealing Act) by virtue of Finance Act 2008 (c. 9), **Sch. 22 para. 2(2)(a)**
- F260** S. 807A(7): definition of "relevant payment" inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 12(3)** (with Sch. 28)
- F261** S. 807A(7): definition of "relevant qualifying payment" inserted (with effect in accordance with Sch. 30 para. 24(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 24(3)**
- F262** S. 807A(7): definition of "relevant qualifying payment" repealed (with effect in accordance with s. 83(3) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 27 para. 12(4), **Sch. 40 Pt. 3(13)**, Note (with Sch. 28)

### *¶<sup>F263</sup> European cross-border transfers of business*

### Textual Amendments

- F263** S. 807B and preceding cross-heading inserted (1.4.2009) with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 257** (with Sch. 2 Pts. 1, 2)



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## **807B Introduction to section 807C**

- (1) Subject to subsections (4) to (6), section 807C applies if condition A or B is met.
- (2) Condition A is that—
  - (a) a company resident in the United Kingdom transfers to a company resident in another member State the whole or part of a business which immediately before the transfer the transferor carried on in a member State other than the United Kingdom through a permanent establishment, and
  - (b) the transfer includes—
    - (i) the transfer of an asset or liability representing a loan relationship,
    - (ii) the transfer of rights and liabilities under a derivative contract, or
    - (iii) the transfer of intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in the case of one or more of which the proceeds of realisation exceed the costs recognised for tax purposes.
- (3) Condition B is that—
  - (a) a company resident in the United Kingdom transfers part of its business to one or more companies,
  - (b) the part of the transferor's business which is transferred was carried on immediately before the transfer in a member State other than the United Kingdom through a permanent establishment,
  - (c) at least one transferee is resident in a member State other than the United Kingdom,
  - (d) the transferor continues to carry on a business after the transfer,
  - (e) the condition in subsection (2)(b) is met, and
  - (f) the transfer—
    - (i) is made in exchange for the issue of shares in or debentures of each transferee to each person holding shares in or debentures of the transferor, or
    - (ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (4) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(i), section 807C —
  - (a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor, and
  - (b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one.
- (5) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(ii), section 807C—
  - (a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor or to the persons holding shares in or debentures of the transferor,

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- (b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one, and
  - (c) only applies as respects the transfer so mentioned if the transferor makes a claim under this section in respect of it.
- (6) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(iii), section 807C—
- (a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if—
    - (i) the companies mentioned in subsection (2)(a) are companies incorporated under the law of a member State, and
    - (ii) the transfer is wholly or partly in exchange for shares or other securities issued by the transferee to the transferor,
  - (b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if—
    - (i) the transferor and at least one of the transferees mentioned in subsection (3)(a) is a company so incorporated, and
    - (ii) the transfer is in exchange for shares or debentures issued by the transferee to the persons holding shares in or debentures of the transferor, and
  - (c) only applies as respects the transfer so mentioned if—
    - (i) the transfer includes the whole of the assets of the transferor used for the purposes of the business or part, or the whole of those assets other than cash, and
    - (ii) the transferor makes a claim under this section in respect of the transfer so mentioned.
- (7) No claim may be made under subsection (6) in respect of a transfer in relation to which a claim is made under section 827 of CTA 2009 (claims to postpone charge on transfer of assets to non-UK resident company).
- (8) For the purposes of this section, a company is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.
- (9) In this section and section 807C—
- “company” means any entity listed as a company in the Annex to the Mergers Directive,
  - “derivative contract” has the same meaning as in Part 7 of CTA 2009,
  - “intangible fixed assets” and “chargeable intangible assets”, in relation to any person, have the same meaning as in Part 8 of CTA 2009,
  - “loan relationship” has the same meaning as in Part 5 of CTA 2009,
  - “the Mergers Directive” means Council Directive No. [90/434/EEC](#) of 23 July 1990 on mergers, transfers etc,
  - “proceeds of realisation”, in relation to intangible fixed assets, has the meaning given in section 739 of CTA 2009, and
  - “recognised for tax purposes” has the same meaning as in Part 8 of CTA 2009.

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[<sup>F264</sup>**807C**Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets]

- (1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 807B(2)(b)(i), (ii) or (iii) but for the Mergers Directive, this Part, including any arrangements having effect by virtue of section 788, is to apply as if that tax had been chargeable.
- (2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—
  - (a) that to the extent permitted by the law of the other member State losses arising on the transfer mentioned in section 807B(2)(b)(i), (ii) or (iii) are set against gains arising on that transfer, and
  - (b) that any relief due to the transferor under that law is claimed.
- (3) Subsection (1) does not apply if—
  - (a) the transfer of business mentioned in section 807B(2)(a) or (3)(a) is not effected for genuine commercial reasons, or
  - (b) that transfer of business forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (4) But subsection (3) does not prevent subsection (1) from applying if before the transfer—
  - (a) the appropriate applicant has applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified the appropriate applicant that they are satisfied subsection (3) will not have that effect.
- (5) In subsection (4) “the appropriate applicant” means—
  - (a) in a case where tax chargeable in respect of such a transfer as is mentioned in section 807B(2)(b)(i) or (ii) is concerned, the companies mentioned in section 807B(2)(a) or (3)(a), and
  - (b) in a case where tax chargeable in respect of such a transfer as is mentioned in section 807B(2)(b)(iii) is concerned, the transferor.
- (6) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.]

**Textual Amendments**

**F264** S. 807C inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 258** (with Sch. 2 Pts. 1, 2)

*[<sup>F265</sup>European cross-border mergers*

**Textual Amendments**

**F265** S. 807D and preceding cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 259** (with Sch. 2 Pts. 1, 2)

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## **807D Introduction to section 807E**

- (1) Section 807E applies if—
- (a) conditions A to E,
  - (b) in the case of a merger within subsection (2)(a), (b) or (c), condition F, and
  - (c) in the case of a merger within subsection (2)(c) or (d), condition G.
- are met.
- (2) Condition A is that—
- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (Societas Europaea),
  - (b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965, in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Co-operative Society (SCE),
  - (c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
  - (d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (3) Condition B is that each merging company is resident in a member State.
- (4) Condition C is that the merging companies are not all resident in the same State.
- (5) Condition D is that in the course of the merger a company resident in the United Kingdom (“company A”) transfers to a company resident in another member State all assets and liabilities relating to a business which company A carried on in a member State other than the United Kingdom through a permanent establishment (but see subsection (9)).
- (6) Condition E is that the transfer mentioned in subsection (5) includes—
- (a) the transfer of an asset or liability representing a loan relationship,
  - (b) the transfer of rights and liabilities under a derivative contract, or
  - (c) the transfer of intangible fixed assets—
    - (i) that are chargeable intangible assets in relation to company A immediately before the transfer, and
    - (ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes.
- (7) Condition F is that—
- (a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or
  - (b) paragraph (a) is not met in relation to the transfer of those assets and liabilities only because, and only so far as, the transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.

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- (8) Condition G is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986).
- (9) In the case of a merger within subsection (2)(a) or (b), in determining whether section 807E applies in respect of such a transfer as is mentioned in subsection (6) (c), condition D is regarded as met even if all liabilities relating to the business which company A carried on are not transferred as mentioned in subsection (5).
- (10) For the purposes of this section, a company is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.
- (11) In this section and section 807E—
- “company” means any entity listed as a company in the Annex to the Mergers Directive,
  - “co-operative society” means a society registered under the Industrial and Provident Societies Act 1965 or a similar society governed by the law of a member State other than the United Kingdom,
  - “derivative contract” has the same meaning as in Part 7 of CTA 2009,
  - “intangible fixed assets” and “chargeable intangible assets”, in relation to any person, have the same meaning as in Part 8 of CTA 2009,
  - “loan relationship” has the same meaning as in Part 5 of CTA 2009,
  - “the Mergers Directive” means Council Directive No. [90/434/EEC](#) of 23 July 1990 on mergers, transfers etc,
  - “proceeds of realisation”, in relation to intangible fixed assets, has the meaning given in section 739 of CTA 2009,
  - “recognised for tax purposes” has the same meaning as in Part 8 of CTA 2009,
  - “SE” and “SCE” have the same meaning as in CTA 2009 (see section 1319 of that Act),
  - “the transferee” means—
    - (a) in relation to a merger within subsection (2)(a), the SE,
    - (b) in relation to a merger within subsection (2)(b), the SCE,
    - (c) in relation to a merger within subsection (2)(c) or (d), the company to which assets and liabilities are transferred, and
  - “transferor” means—
    - (a) in relation to a merger within subsection (2)(a), a company merging to form the SE,
    - (b) in relation to a merger within subsection (2)(b), a co-operative society merging to form the SCE, and
    - (c) in relation to a merger within subsection (2)(c) or (d), a company transferring all of its assets and liabilities.
- (12) In section 807E, “company A”, “the merger” and “the merging companies” have the same meaning as in this section.

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**[<sup>F266</sup>807E Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets]**

- (1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 807D(6)(a), (b) or (c) but for the Mergers Directive, this Part, including any arrangements having effect by virtue of section 788, is to apply as if that tax had been chargeable.
- (2) In calculating tax notionally chargeable under subsection (1) in respect of the transfer mentioned in section 807D(6)(a) or (b), it is to be assumed—
  - (a) that to the extent permitted by the law of the other member State losses arising on that transfer are set against gains arising on that transfer, and
  - (b) that any relief due to company A under that law is claimed.
- (3) Subsection (1) does not apply if—
  - (a) the merger is not effected for genuine commercial reasons, or
  - (b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (4) But subsection (3) does not prevent subsection (1) from applying if before the merger—
  - (a) any of the merging companies has applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified the merging companies that they are satisfied subsection (3) will not have that effect.
- (5) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.]

**Textual Amendments**

**F266** S. 807E inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 260** (with Sch. 2 Pts. 1, 2)

*[<sup>F267</sup>Transparent entities involved in cross-border transfers and mergers]*

**Textual Amendments**

**F267** S. 807F and preceding cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 261** (with Sch. 2 Pts. 1, 2)

**807F Introduction to section 807G**

- (1) Section 807G applies if, as a result of—
  - (a) a relevant loan relationship transaction,
  - (b) a relevant derivative contracts transaction, or
  - (c) a relevant intangible fixed assets transaction,



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tax would have been chargeable under the law of a member State other than the United Kingdom in respect of a relevant profit but for the Mergers Directive.

- (2) In this section “relevant loan relationship transaction” means—
- (a) a transfer of a kind which meets condition A or B in section 421 of CTA 2009 or would meet one of those conditions if—
    - (i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and
    - (ii) the condition in section 421(3)(c) or (4)(f) of that Act were met, and in relation to which the transferor or transferee or one of the transferees is a transparent entity, or
  - (b) a merger of a kind mentioned in section 431(2) of that Act which meets—
    - (i) conditions B to D in section 431,
    - (ii) in the case of a merger within section 431(3)(a), (b) or (c), condition E in section 431, and
    - (iii) in the case of a merger within section 431(3)(c) or (d), condition F in section 431,and in relation to which one or more of the merging companies is a transparent entity.
- (3) In this section “relevant derivative contracts transaction” means—
- (a) a transfer of a kind which meets condition A or B in section 674 of CTA 2009 or would meet one of those conditions if—
    - (i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and
    - (ii) the condition in section 674(2)(c) or (3)(f) of that Act were met, and in relation to which the transferor is a transparent entity, or
  - (b) a merger of a kind mentioned in section 682(2) of that Act which meets—
    - (i) conditions B to D in section 682,
    - (ii) in the case of a merger within section 682(2)(a), (b) or (c), condition E in section 682, and
    - (iii) in the case of a merger within section 682(2)(c) or (d), condition F in section 682,and in relation to which one or more of the merging companies is a transparent entity.
- (4) In this section “relevant intangible fixed assets transaction” means—
- (a) a transfer—
    - (i) which is of a kind which meets condition A or B in section 819 of CTA 2009, or would meet one of those conditions if the business or part of the business transferred were carried on by the transferor in the United Kingdom, and
    - (ii) in relation to which the transferor or transferee or one of the transferees is a transparent entity, or
  - (b) a merger—
    - (i) which is of a kind mentioned in section 821(2) of that Act,
    - (ii) which meets conditions B and C in section 821,
    - (iii) which, if it is a merger within section 821(2)(a), (b) or (c), meets condition D in section 821,

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- (iv) which, if it is a merger within section 821(2)(c) or (d), meets condition E in section 821,
  - (v) in the course of which no qualifying assets are transferred to which section 818 (company reconstruction involving transfer of business) applies, and
  - (vi) in relation to which one or more of the merging companies is a transparent entity.
- (5) In this section “relevant profit” means—
- (a) in the case of a transfer within subsection (2)(a), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to the transferee,
  - (b) in the case of a merger within subsection (2)(b), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to another company in the course of the merger,
  - (c) in the case of a transfer within subsection (3)(a), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to the transferee,
  - (d) in the case of a merger within subsection (3)(b), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to another company in the course of the merger,
  - (e) in the case of a transfer within subsection (4)(a), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity, if it were not transparent,
  - (f) in the case of a merger within subsection (4)(b), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity in the course of the merger, if it were not transparent.
- (6) In this section and section 807G—
- “company” means any entity listed as a company in the Annex to the Mergers Directive,
  - “derivative contract” has the same meaning as in Part 7 of CTA 2009,
  - “intangible fixed assets” has the same meaning as in Part 8 of CTA 2009,
  - “loan relationship” has the same meaning as in Part 5 of CTA 2009,
  - “the Mergers Directive” means Council Directive No. [90/434/EEC](#) of 23 July 1990 on mergers, transfers etc, and
  - “transparent entity” means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.

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[<sup>F268</sup>**807G** Tax treated as chargeable in respect of relevant transactions]

- (1) This Part, including any arrangements having effect by virtue of section 788, is to apply as if the tax that would have been chargeable as mentioned in section 807F(1) had been chargeable.
- (2) In calculating tax notionally chargeable under subsection (1), it is assumed—
  - (a) that to the extent permitted by the law of the other member State mentioned in section 807F(1) losses arising on the relevant transfer are set against profits arising on it, and
  - (b) that any relief available under that law is claimed.
- (3) In this section “the relevant transfer” means—
  - (a) the transfer of assets or liabilities mentioned in paragraph (a) or (b) of section 807F(5),
  - (b) the transfer of rights and liabilities mentioned in paragraph (c) or (d) of that section, or
  - (c) the transfer of intangible fixed assets mentioned in paragraph (e) or (f) of that section.]

**Textual Amendments**

**F268** S. 807G inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 262** (with Sch. 2 Pts. 1, 2)

**808 Restriction on deduction of interest or dividends from trading income.**

<sup>M29</sup>In the case of a person not resident in the United Kingdom who carries on in the United Kingdom [<sup>F269</sup>a business], receipts of interest [<sup>F270</sup>, dividend or royalties] which have been treated as tax-exempt under arrangements having effect by virtue of section 788 are not to be excluded from trading income or profits of the business so as to give rise to losses to be set off (under section 393 [<sup>F271</sup>393A(1)] or [<sup>F272</sup>436A]) against income or profits.

<sup>F273</sup>

**Textual Amendments**

- F269** Words in s. 808 substituted (with effect in accordance with s. 140(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 140(1)(a)**
- F270** Words in s. 808 substituted (with effect in accordance with s. 140(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 140(1)(b)**
- F271** Words in s. 808 inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para.21**
- F272** Words in s. 808 substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 54** (with Sch. 7 Pt. 2)
- F273** Words in s. 808 repealed (with effect in accordance with s. 140(2) of the repealing Act) by Finance Act 1994 (c. 9), s. 140(1)(c), **Sch. 26 Pt. 5(18)**, Note

**Marginal Citations**

**M29** Source—1976 s.50(1)

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**[<sup>F274</sup>808A Interest: special relationship.**

- (1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—
  - (a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and
  - (b) make provision (the special relationship provision) that where owing to a special relationship the amount of the interest paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.
- (2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—
  - (a) the question whether the loan would have been made at all in the absence of the relationship,
  - (b) the amount which the loan would have been in the absence of the relationship, and
  - (c) the rate of interest and other terms which would have been agreed in the absence of the relationship.
- (3) The special relationship provision shall be construed as requiring the taxpayer to show that there is no special relationship or (as the case may be) to show the amount of interest which would have been paid in the absence of the special relationship.
- (4) In a case where—
  - (a) a company makes a loan to another company with which it has a special relationship, and
  - (b) it is not part of the first company's business to make loans generally,
 the fact that it is not part of the first company's business to make loans generally shall be disregarded in construing subsection (2) above.
- (5) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the debt on which the interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).]

**Textual Amendments**

**F274** S. 808A inserted (16.7.1992 with application in relation to interest paid after 14.5.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\), s.52](#)

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

**C44** S. 808A(2)-(4) applied (with effect in accordance with s. 97(5)(6) of the affecting Act) by [Finance Act 2004 \(c. 12\), s. 103](#) (with s. 106)

**C45** S. 808A(2)-(4) applied (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 764](#) (with Sch. 2)

**[<sup>F275</sup>808B Royalties: special relationship.**

- (1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—

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- (a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and
  - (b) make provision (the special relationship provision) that where owing to a special relationship the amount of the royalties paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.
- (2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—
  - (a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the relationship,
  - (b) the rate or amounts of royalties and other terms which would have been agreed in the absence of the relationship, and
  - (c) where subsection (3) below applies, the factors specified in subsection (4) below.
- (3) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—
  - (a) the person who is liable to pay the royalties,
  - (b) a person who is, or has at any time been, an associate of the person who is liable to pay the royalties,
  - (c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by the person liable to pay those royalties, or
  - (d) a person who is, or has at any time been, an associate of a person who has at any time carried on such a business as is mentioned in paragraph (c) above.
- (4) The factors mentioned in subsection (2)(c) above are—
  - (a) the amounts which were paid under the transaction, or under each of the transactions in the series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,
  - (b) the amounts which would have been so paid in the absence of a special relationship, and
  - (c) the question whether the transaction or series of transactions would have taken place in the absence of such a relationship.
- (5) The special relationship provision shall be construed as requiring the taxpayer to show—
  - (a) the absence of any special relationship, or
  - (b) the rate or amount of royalties that would have been payable in the absence of the relationship,as the case may be.
- (6) The requirement on the taxpayer to show in accordance with subsection (5)(a) above the absence of any special relationship includes a requirement—
  - (a) to show that no person of any of the descriptions in paragraphs (a) to (d) of subsection (3) above has previously been the beneficial owner of the asset in respect of which the royalties are paid, or of any asset which that asset represents or from which it is derived, or
  - (b) to show the matters specified in subsection (7) below,

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as the case may be.

- (7) Those matters are—
- (a) that the transaction or series of transactions mentioned in subsection (4)(a) above would have taken place in the absence of a special relationship, and
  - (b) the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of such a relationship.
- (8) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).
- (9) For the purposes of this section one person (“person A”) is an associate of another person (“person B”) at a given time if—
- (a) person A was, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person B at that time, or
  - (b) the same person was or same persons were, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person A and person B at that time.]

#### Textual Amendments

**F275** S. 808B inserted (with effect in accordance with Sch. 30 para. 25(2) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 25(1)

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

**C46** S. 808B(2)-(7)(9) applied (with effect in accordance with s. 97(5)(6) of the affecting Act) by Finance Act 2004 (c. 12), s. 103 (with s. 106)

**C47** S. 808B(2)-(7)(9) applied (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 764 (with Sch. 2)

## 809 Relief in respect of discretionary trusts.

<sup>M30</sup>(1) In any case where—

- (a) [<sup>F276</sup>income tax is treated under section 494 of ITA 2007 as having been paid in relation to a payment made by the trustees of a settlement] and the income arising under the [<sup>F277</sup>settlement] includes any taxed overseas income, and
- (b) the trustees certify that—
  - (i) the income out of which the payment was made was or included taxed overseas income of an amount and from a source stated in the certificate, and
  - (ii) that amount arose to them not earlier than six years before the end of the year of assessment in which the payment was made;

then the person to whom the payment was made may claim that the payment, up to the amount so certified, shall be treated for the purposes of this Part as income received by him from that source and so received in the year in which the payment was made.



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- (2) In subsection (1) above “taxed overseas income”, in relation to any [F277 settlement], means income in respect of which the trustees are entitled to credit for overseas tax under this Part.

#### Textual Amendments

- F276** Words in s. 809(1)(a) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 199](#) (with [Sch. 2](#))
- F277** Words in s. 809(1)(a)(2) substituted (6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 paras. 24\(b\), 27\(1\)](#)

#### Marginal Citations

- M30** Source—1973 s.18

### 810 Postponement of capital allowances to secure double taxation relief.

F278 .....

#### Textual Amendments

- F278** [S. 810](#) repealed (with effect in accordance with [Sch. 30 para. 26\(2\)](#) of the repealing Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 30 para. 26\(1\)](#), [Sch. 40 Pt. 2\(13\)](#), Note

### 811 Deduction for foreign tax where no credit allowable.

- <sup>M31</sup>(1) For the purposes of the Tax Acts, the amount of any income arising in any place outside the United Kingdom shall, subject to subsection (2) below, be treated as reduced by any sum which has been paid in respect of tax on that income in the place where the income has arisen (that is to say, tax payable under the law of a territory outside the United Kingdom).

- (2) Subsection (1) above—

- (a) shall not apply to income the tax on which is to be computed by reference to the amount of income received in the United Kingdom; <sup>F279</sup> . . . [ <sup>F280</sup> and ]
- (b) <sup>F281</sup> .....
- <sup>F282</sup>(c) .....
- [ <sup>F283</sup>(d) shall not require any income to be treated as reduced by an amount of underlying tax which, by virtue of section 799(1B)(b), falls to be left out of account for the purposes of section 799;]

and this section has effect subject to section 795(2) [ <sup>F284</sup> and to section 111 of the Finance Act 2004 (computation of income subject to special withholding tax)].

- [ <sup>F285</sup>(3) This section has effect for the purposes of corporation tax notwithstanding anything in [ <sup>F286</sup> —

- (a) [ <sup>F287</sup> section 464(1) of CTA 2009 ] (matters to be brought into account in the case of loan relationships only under [ <sup>F287</sup> Part 5 ] of that Act) [ <sup>F288</sup>; or
- (b) [ <sup>F289</sup> section 906(1) of CTA 2009 ] (matters to be brought into account in respect of intangible fixed assets only under [ <sup>F289</sup> Part 8 of that Act ].)]

[ <sup>F290</sup>(3A) If—

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- (a) income of any person (“P”) is treated under subsection (1) as reduced by a sum paid in respect of tax on that income in the place where the income has arisen (“foreign tax”), and
  - (b) a payment is made by a tax authority to P, or any person connected with P, by reference to the foreign tax,
- the amount of P's income is to be increased by an amount equal to the payment made to P or the connected person.
- (3B) Section 839 applies for the purposes of determining whether or not a person is connected with P.]
- [<sup>F291</sup>(4) Where the amount by which any income is treated under subsection (1) above as reduced is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either—
- (a) in the United Kingdom, or
  - (b) under the law of any other territory,
- [<sup>F292</sup>or the amount of P's income is increased under subsection (3A),] nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the [<sup>F293</sup>adjustment or increase gives rise], being an assessment or claim made not later than six years from the time when [<sup>F294</sup>all such assessments, adjustments, increases] and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what reduction under subsection (1) above falls to be treated as made [<sup>F295</sup>or increase under subsection (3A) falls to be made].
- (5) Subject to subsection (7) below, where—
- (a) the amount of any income of a person is treated under subsection (1) above as reduced by any sum, and
  - (b) the amount of that reduction is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom [<sup>F296</sup>or an increase under subsection (3A)],
- that person shall give notice in writing to an officer of the Board that an adjustment [<sup>F297</sup>or increase] has been made that has rendered the amount of the reduction excessive.
- (6) A notice under subsection (5) above must be given within one year from the time of the making of the adjustment [<sup>F298</sup>or increase].
- (7) Subsections (5) and (6) above do not apply where the adjustment [<sup>F298</sup>or increase] is one whose consequences in relation to the reduction fall to be given effect to in accordance with regulations made under—
- (a) section 182(1) of the <sup>M32</sup>Finance Act 1993 (regulations relating to individual members of Lloyd's); or
  - (b) section 229 of the <sup>M33</sup>Finance Act 1994 (regulations relating to corporate members of Lloyd's).
- (8) A person who fails to comply with the requirements imposed on him by subsections (5) and (6) above in relation to any adjustment [<sup>F298</sup>or increase] shall be liable to a penalty of an amount not exceeding the amount of the difference specified in subsection (9) below.
- (9) The difference is that between—

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- (a) the amount of tax payable by the person in question for the relevant chargeable period, after giving effect to the reduction that ought to be made under subsection (1) above; and
- (b) the amount that would have been the tax so payable after giving effect instead to a reduction under that subsection of the amount rendered excessive as mentioned in subsection (5)(b) above.

(10) For the purposes of subsection (9) above “the relevant chargeable period” means the chargeable period as respects which the reduction was treated as made.]

### Textual Amendments

- F279** Word preceding s. 811(2)(b) repealed (with effect in accordance with Sch. 27 para. 6(3) of the repealing Act) by [Finance Act 2001 \(c. 9\)](#), [Sch. 27 para. 6\(2\)\(a\)](#), [Sch. 33 Pt. 2\(8\)](#), Note
- F280** Word at the end of s. 811(2)(a) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 200\(a\)](#) (with Sch. 2)
- F281** S. 811(2)(b) and word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 200\(b\)](#), [Sch. 3 Pt. 1](#) (with Sch. 2)
- F282** S. 811(2)(c) and preceding word repealed (with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(g)(3)(4), 213, [Sch. 23 Pt. III\(9\)](#)
- F283** S. 811(2)(d) inserted (with effect in accordance with Sch. 27 para. 6(3) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), [Sch. 27 para. 6\(2\)\(c\)](#)
- F284** Words in s. 811(2) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 284\(1\)](#), s. 115(2)
- F285** S. 811(3) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 47](#) (with Sch. 15)
- F286** Words in s. 811(3) renumbered as s. 811(3)(a) (24.7.2002) by virtue of [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 5\(5\)](#)
- F287** Words in s. 811(3)(a) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [Sch. 1 para. 263\(a\)](#) (with Sch. 2 Pts. 1, 2)
- F288** S. 811(3)(b) and preceding word inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 5\(5\)](#)
- F289** Words in s. 811(3)(b) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [Sch. 1 para. 263\(b\)](#) (with Sch. 2 Pts. 1, 2)
- F290** S. 811(3A)(3B) inserted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 59\(9\)](#)
- F291** S. 811(4)-(10) inserted (with effect in accordance with [Sch. 30 para. 27\(3\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 30 para. 27\(2\)](#)
- F292** Words in s. 811(4) inserted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 59\(10\)\(a\)](#)
- F293** Words in s. 811(4) substituted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 59\(10\)\(b\)](#)
- F294** Words in s. 811(4) substituted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 59\(10\)\(c\)](#)
- F295** Words in s. 811(4) inserted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 59\(10\)\(d\)](#)
- F296** Words in s. 811(5)(b) inserted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 59\(11\)\(a\)](#)
- F297** Words in s. 811(5) inserted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 59\(11\)\(b\)](#)
- F298** Words in s. 811(6)(7)(8) inserted (with effect in accordance with s. 59(13) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 59\(12\)](#)

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### Marginal Citations

- M31** Source—1970 s.516; 1973 s.40(1); 1987 Sch.15 2(19)  
**M32** 1993 c. 34.  
**M33** 1994 c. 9.

## 812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states.

<sup>M34</sup>(1) In any case where—

- (a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and
- (b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under [<sup>F299</sup>section 2(1) of TIOPA 2010] to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under [<sup>F300</sup>section 397(2)(a) of ITTOIA 2005] to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made [<sup>F301</sup>nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where] the credit exceeds that income tax, to have the excess paid to it.

- (2) <sup>M35</sup>In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [<sup>F302</sup>in relation to] which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.
- (3) <sup>M36</sup>A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.
- (4) For the purposes of subsection (3) above—
  - (a) [<sup>F303</sup>7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and]
  - (b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

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- (5) <sup>M37</sup>Except where the context otherwise requires, in this section and sections 813 to 815—
- (a) “arrangements” means the arrangements referred to in subsection (1) above;
  - (b) “group” and “member of a group” shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words “ 51 per cent.” for the words “75 per cent.” wherever they occur;
  - [<sup>F304</sup>(c) whether a person is connected with another is determined in accordance with [<sup>F305</sup>section 1122 of CTA 2010];]
  - [<sup>F306</sup>(d) sections 449 to 451 of CTA 2010 apply but with the substitution in section 449 of “6 years” for “12 months”.]
  - (e) “the relevant date” means the earliest of the following dates—
    - (i) the date on which this section comes into force;
    - (ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;
    - (iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.
- (6) <sup>M38</sup>The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—
- (a) if the associated company was incorporated under the law of the territory; or
  - (b) for the purposes of granting relief in taxing dividends received by companies.
- (7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted [<sup>F307</sup>either the following subsection—
- “(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.”;
- or the following subsections—
- “(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.
- (4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised.”].
- (8) <sup>M39</sup>The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

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- (9)<sup>M40</sup> No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

#### Textual Amendments

- F299** Words in s. 812(1)(b) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), **Sch. 8 para. 30** (with [Sch. 9](#))
- F300** Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 326(a)** (with [Sch. 2](#))
- F301** Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 326(b)** (with [Sch. 2](#))
- F302** Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **s. 88(2)(a)**
- F303** S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 38\(2\)](#), **Sch. 41 Pt. 5(10)**, Note
- F304** S. 812(5)(c) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **Sch. 1 para. 201** (with [Sch. 2](#))
- F305** Words in s. 812(5)(c) substituted (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **Sch. 1 para. 116(a)** (with [Sch. 2](#))
- F306** S. 812(5)(d) substituted (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **Sch. 1 para. 116(b)** (with [Sch. 2](#))
- F307** Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 20 para. 38(3)**

#### Marginal Citations

- M34** Source—1985 s.54(1),(3)
- M35** Source—1985 s.54(6) Sch.13 5
- M36** Source—1985 s.54(4),(5)
- M37** Source—1985 s.54(6) Sch.13 5.
- M38** Source—1985 s.54(7)(b), Sch.13 5(1)
- M39** Source—1985 s.54(7)(a)
- M40** Source—1985 s.54(8)

## 812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. **U.K.**

<sup>M34</sup>(1) In any case where—

- (a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and
- (b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under [<sup>F300</sup>section 397(2)(a) of ITTOIA 2005] to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made [<sup>F301</sup>nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where] the credit exceeds that income tax, to have the excess paid to it.



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- (2)<sup>M35</sup>In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [<sup>F302</sup>in relation to] which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.
- (3)<sup>M36</sup>A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.
- (4) For the purposes of subsection (3) above—
- (a) [<sup>F303</sup>7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and]
  - (b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.
- (5)<sup>M37</sup>Except where the context otherwise requires, in this section and sections 813 to 815—
- (a) “arrangements” means the arrangements referred to in subsection (1) above;
  - (b) “group” and “member of a group” shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words “ 51 per cent. ” for the words “75 per cent.” wherever they occur;
  - [<sup>F304</sup>(c) whether a person is connected with another is determined in accordance with section 839;]
  - (d) section 416 applies with the substitution of the words “ six years ” for “one year” in subsection (1); and
  - (e) “the relevant date” means the earliest of the following dates—
    - (i) the date on which this section comes into force;
    - (ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;
    - (iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.
- (6)<sup>M38</sup>The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory

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shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

- (a) if the associated company was incorporated under the law of the territory; or
- (b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted <sup>F307</sup> either the following subsection—

“(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.”;

or the following subsections—

“(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised.”].

(8) <sup>M39</sup>The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) <sup>M40</sup>No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

#### Textual Amendments

- F300** Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 326(a)* (with Sch. 2)
- F301** Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 326(b)* (with Sch. 2)
- F302** Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by *Finance Act 2002 (c. 23), s. 88(2)(a)*
- F303** S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by *Finance Act 1996 (c. 8), Sch. 20 para. 38(2), Sch. 41 Pt. 5(10)*, Note
- F304** S. 812(5)(c) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 201* (with Sch. 2)
- F307** Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by *Finance Act 1996 (c. 8), Sch. 20 para. 38(3)*

#### Marginal Citations

- M34** Source—1985 s.54(1),(3)
- M35** Source—1985 s.54(6) Sch.13 5
- M36** Source—1985 s.54(4),(5)
- M37** Source—1985 s.54(6) Sch.13 5.
- M38** Source—1985 s.54(7)(b), Sch.13 5(1)
- M39** Source—1985 s.54(7)(a)

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**M40** Source—1985 s.54(8)

### **813 Recovery of tax credits incorrectly paid.**

<sup>M41</sup>(1) Where—

- (a) section 812 applies so as to withdraw the entitlement of a company to claim to have a tax credit in respect of a qualifying distribution set against the income tax chargeable on its income and to have the excess of the credit over that income tax paid to it; and
- (b) the company (“the recipient company”) has either had that excess paid to it, or has received an additional amount in accordance with arrangements made under Regulation 2(1) of the <sup>M42</sup>Double Taxation Relief (Taxes on Income) (General) (Dividend) Regulations 1973;

the recipient company shall be liable to a fine for the violation of the provisions of section 812 equal to twice the amount of the excess or the additional amount, as the case may be.

(2) Any fine payable under subsection (1) above—

- (a) shall be payable to the Board;
  - (b) shall be treated as having become payable at the date when the excess or additional amount was paid to the recipient company; and
  - (c) may be recovered in accordance with subsections (3) to (7) below;
- and any such fine is referred to below as “the recoverable amount”.

(3) The recoverable amount may be assessed and recovered as if it were unpaid tax and section 30 of the Management Act (recovery of overpayment of tax etc.) shall apply accordingly.

(4) Any amount which may be assessed and recovered as if it were unpaid tax by virtue of this section shall carry interest at the rate of 9 per cent. per annum from the date when it was payable in accordance with subsection (1) above until the date it is paid.

(5) It is hereby declared that this section applies to a recoverable amount which is paid without the making of an assessment (but is paid after it is due) and that, where the recoverable amount is charged by any assessment (whether or not any part of it has been paid when the assessment is made), this section applies in relation to interest running before, as well as after, the making of the assessment.

(6) Where the recoverable amount is not paid by the recipient company within six months from the date on which it became payable—

- (a) the recoverable amount may at any time within six years from the date on which it became payable be assessed and recovered as if it were unpaid tax due from any person who—
  - (i) is or was at any time prior to the expiration of that six year period connected with the recipient company, or
  - (ii) would have been connected on the assumption that all the facts and circumstances relating to the recipient company at the time the excess or additional amount, as the case may be, was paid continued to apply for six years thereafter,

and section 30 of the Management Act shall apply accordingly; and

- (b) .....

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- <sup>F308</sup>(7) Where a recoverable amount is assessed and recovered from a person connected with the recipient company in accordance with subsection (6)(a) above, that person shall be liable for the interest payable in accordance with subsection (4) above, and until the interest is so paid, subsection (6)(b) above shall apply as if the words “the interest due in accordance with subsection (4) above is paid” were substituted for the words “the recoverable amount is paid in accordance with the provisions of this section”.
- (8) Interest payable under this section shall be paid without any deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (9) Where under the law in force in a territory outside the United Kingdom interest is payable subject to a deduction in respect of taxation and such deduction applies to an amount of interest paid in accordance with subsection (4) above, the reference to the rate of 9 per cent. per annum in that subsection shall be deemed to be a reference to such rate of interest as after such deduction shall be equal to the rate of 9 per cent. per annum.

#### Textual Amendments

**F308** S. 813(6)(b) repealed (with effect in accordance with Sch. 3 para. 37(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 37(2), Sch. 27 Pt. 3(2), Note

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

**C48** *Reproduced in Part III Vol.5.*

#### Marginal Citations

**M41** Source—1985 Sch.13 1

**M42** S.I. 1973/317.

## 814 Arrangements to avoid section 812.

- <sup>M43</sup>(1) In any case where arrangements are made, whether before or after the coming into force of this section, as a result of which interest is paid or a discount is allowed by or through a person who is resident in the United Kingdom, or carries on business in the United Kingdom through a branch or agency, and it is reasonable to suppose that, if such payment or allowance had not been made, a qualifying distribution would have been made by that person, or by another company resident in the United Kingdom to a company which has, or is an associated company of a company which has, a qualifying presence in a unitary state at the time when the payment or allowance is made, then—
- (a) no person who receives that payment or allowance shall be entitled to relief from income tax or corporation tax thereon by virtue of arrangements having effect under [<sup>F309</sup>section 2(1) of TIOPA 2010]; and
  - (b) the payment or allowance shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (2) Without prejudice to the generality of subsection (1) above, where a payment or allowance is not of itself a payment or allowance to which that subsection applies, but is made in conjunction with other payments of whatever nature and taken together with those payments has substantially similar effect to a distribution, then, for the purposes of subsection (1) above it shall be treated as a payment or allowance within that subsection.

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- (3) Any company which has received such a payment of interest as is referred to in subsection (1) above, from which income tax has not been deducted by the person making the payment, and has a qualifying presence in a unitary state at the time of the payment, shall be treated for the purposes of section 813 as a company—
- (a) from which the entitlement to claim payment of the excess of a tax credit over the income tax chargeable on its income has been withdrawn by section 812(1), and
  - (b) which has had paid to it such an excess in an amount equal to the income tax which should have been deducted from the payment of interest.

#### Textual Amendments

**F309** Words in s. 814(1)(a) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), **Sch. 8 para. 31** (with [Sch. 9](#))

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

**C49** [S. 814\(1\)](#) modified (with effect in accordance with s. 153(4) of the modifying Act) by [Finance Act 2003 \(c. 14\)](#), **s. 153(2)(a)**

#### Marginal Citations

**M43** [Source-1985 Sch. 13 3](#)

## 814 Arrangements to avoid section 812. **U.K.**

- <sup>M43</sup>(1) In any case where arrangements are made, whether before or after the coming into force of this section, as a result of which interest is paid or a discount is allowed by or through a person who is resident in the United Kingdom, or carries on business in the United Kingdom through a branch or agency, and it is reasonable to suppose that, if such payment or allowance had not been made, a qualifying distribution would have been made by that person, or by another company resident in the United Kingdom to a company which has, or is an associated company of a company which has, a qualifying presence in a unitary state at the time when the payment or allowance is made, then—
- (a) no person who receives that payment or allowance shall be entitled to relief from income tax or corporation tax thereon by virtue of arrangements having effect under section 788(1); and
  - (b) the payment or allowance shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (2) Without prejudice to the generality of subsection (1) above, where a payment or allowance is not of itself a payment or allowance to which that subsection applies, but is made in conjunction with other payments of whatever nature and taken together with those payments has substantially similar effect to a distribution, then, for the purposes of subsection (1) above it shall be treated as a payment or allowance within that subsection.
- (3) Any company which has received such a payment of interest as is referred to in subsection (1) above, from which income tax has not been deducted by the person making the payment, and has a qualifying presence in a unitary state at the time of the payment, shall be treated for the purposes of section 813 as a company—

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- (a) from which the entitlement to claim payment of the excess of a tax credit over the income tax chargeable on its income has been withdrawn by section 812(1), and
- (b) which has had paid to it such an excess in an amount equal to the income tax which should have been deducted from the payment of interest.

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

**C49** S. 814(1) modified (with effect in accordance with s. 153(4) of the modifying Act) by [Finance Act 2003 \(c. 14\), s. 153\(2\)\(a\)](#)

**Marginal Citations**

**M43** Source-1985 Sch. 13 3

**815 Power to inspect documents.**

<sup>M44</sup>Where it appears to the Board that the provisions of sections 812 to 814 may apply to a company resident outside the United Kingdom (“the foreign parent”), the Board may, by notice given to the foreign parent or any associated company of the foreign parent, require that company within such time (not being less than 30 days) as may be specified in the notice to make available for inspection any books, accounts or other documents or records whatsoever of that company where in the opinion of the Board it is proper that they should inspect such documents for the purposes of ascertaining whether those provisions apply to the foreign parent or such associated company notwithstanding that in the opinion of the person to whom the notice is given those provisions do not apply to that company or any associated company of that company.

**Marginal Citations**

**M44** Source—1985 Sch.13 4(1)

**[<sup>F310</sup>815A] Transfer of a non-UK trade.**

- (1) This section applies where section 269C of the 1970 Act or section 140C [<sup>F311</sup>or 140F] of the Taxation of Chargeable Gains Act 1992 applies; and references in this section to company A, the transfer and the trade shall be construed accordingly.
- [<sup>F312</sup>(2) Where gains accruing to company A on the transfer would have been chargeable to tax under the law of the relevant member State but for the Mergers Directive, this Part, including any arrangements having effect by virtue of section 788, shall apply as if the amount of tax, calculated on the required basis, which would have been payable under that law in respect of the gains so accruing but for that Directive, were tax payable under that law.]
- (5) For the purposes of this section, the required basis is that—
  - (a) so far as permitted under the law of the relevant member State, any losses arising on the transfer are set against any gains so arising, and
  - (b) any relief available to company A under that law has been duly claimed.
- (6) In this section—



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“the Mergers Directive” means the Directive of the Council of the European Communities dated 23rd July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member States (no. 90/434/EEC);

“relevant member State” means the member State in which, immediately before the time of the transfer, company A carried on the trade through a [<sup>F313</sup>permanent establishment].]

#### Textual Amendments

**F310** S. 815A inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 50

**F311** Words in s. 815A(1) inserted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 59(1)

**F312** S. 815A(2) substituted for s. 815A(2)-(4) (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 39

**F313** Words in s. 815A(6) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)

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

**C50** S. 815A applied (*retrospectively*) by Taxation of Chargeable Gains Act 1992 (c. 12), s. 140C(5) (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), s. 45)

S. 815A applied (*retrospectively*) by Income and Corporation Taxes Act 1970 (c. 10), s. 269C(5) (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), s. 48)

**C51** S. 815A applied by Taxation of Chargeable Gains Act 1992 (c. 12), s. 140F(4) (as substituted (29.11.2007 with effect in accordance with reg. 3 of the affecting S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), Sch. 2 para. 2)

#### [<sup>F314</sup>815A] residents and foreign enterprises

- (1) Where arrangements having effect under section 788 make the provision mentioned in subsection (2) (however expressed), that provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.
- (2) The provision is that the profits of an enterprise which is resident outside the United Kingdom, or carries on a trade, profession or business the control or management of which is situated outside the United Kingdom, are not to be subject to United Kingdom tax except in so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.
- (3) A person is resident in the United Kingdom for the purposes of this section if the person is so resident for the purposes of the arrangements having effect under section 788.

[<sup>F315</sup>(4) This section does not apply in relation to—

- (a) income of a person resident in the United Kingdom to which section 858 of ITTOIA 2005 applies, or
- (b) income of a company resident in the United Kingdom to which section 1266 of CTA 2009 applies.]]

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#### Textual Amendments

- F314** S. 815AZA inserted (with effect in accordance with s. 59(2) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 59\(1\)](#)
- F315** S. 815AZA(4) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), Sch. 1 para. 264](#) (with Sch. 2 Pts. 1, 2)

#### [<sup>F316</sup>**815A**Mutual agreement procedure and presentation of cases under arrangements.

- (1) Where, under and for the purposes of arrangements made [<sup>F317</sup>in relation to] a territory outside the United Kingdom and having effect under section 788—
- (a) a case is presented to the Board, or to an authority in that territory, by a person concerning his being taxed (whether in the United Kingdom or that territory) otherwise than in accordance with the arrangements; and
  - (b) the Board arrives at a solution to the case or makes a mutual agreement with an authority in that territory for the resolution of the case,
- subsections (2) and (3) below have effect.
- (2) The Board shall give effect to the solution or mutual agreement, notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise).
- (3) A claim for relief under any provision of the Tax Acts may be made in pursuance of the solution or mutual agreement at any time before the expiration of the period of 12 months following the notification of the solution or mutual agreement to the person affected, notwithstanding the expiration of the time limited by any other enactment for making the claim.
- (4) Where arrangements having effect under section 788 include provision for a person to present a case to the Board concerning his being taxed otherwise than in accordance with the arrangements, subsections (5) and (6) below have effect.
- (5) The presentation of any such case under and in accordance with the arrangements—
- (a) does not constitute a claim for relief under the Tax Acts; and
  - (b) is accordingly not subject to section 42 of the Management Act or any other enactment relating to the making of such claims.
- (6) Any such case must be presented before the expiration of—
- (a) the period of 6 years following the end of the chargeable period to which the case relates; or
  - (b) such longer period as may be specified in the arrangements.]

#### Textual Amendments

- F316** S. 815AA inserted (with effect in accordance with [Sch. 30 para. 28\(2\)\(3\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 30 para. 28\(1\)](#)
- F317** Words in s. 815AA(1) substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 88\(2\)\(a\)](#)

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**[<sup>F318</sup>815B] The Arbitration Convention.**

- (1) Subsection (2) below applies if the Arbitration Convention requires the Board to give effect to—
  - (a) an agreement or decision, made under the Convention by the Board (or their authorised representative) and any other competent authority, on the elimination of double taxation, or
  - (b) an opinion, delivered by an advisory commission set up under the Convention, on the elimination of double taxation.
- (2) The Board shall give effect to the agreement, decision or opinion notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the making of an assessment or otherwise).
- (3) Any enactment which limits the time within which claims for relief under any provision of the Tax Acts may be made shall not apply to a claim made in pursuance of an agreement, decision or opinion falling within subsection (1)(a) or (b) above.
- (4) In this section “the Arbitration Convention” means the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23rd July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).]

**Textual Amendments**

**F318** S. 815B inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 51(1)

**[<sup>F319</sup>815C] Exchange of information with other [<sup>F320</sup>territories].**

<sup>F321</sup> .....

**Textual Amendments**

**F319** S. 815C inserted (28.7.2000) by Finance Act 2000 (c. 17), s. 146(1)

**F320** Word in s. 815C sidenote substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), s. 88(2)(b)

**F321** S. 815C repealed (19.7.2006) by Finance Act 2006 (c. 25), Sch. 26 Pt. 8(2)

**816 Disclosure of information.**

<sup>M45</sup>(1) Where under the law in force in any territory outside the United Kingdom provision is made for the allowance, in respect of the payment of United Kingdom income tax or corporation tax, of relief from tax payable under that law, the obligation as to secrecy imposed by the Tax Acts upon [<sup>F322</sup>Revenue and Customs officials] shall not prevent the disclosure to the authorised officer of the [<sup>F323</sup>authorities] of the territory in question of such facts as may be necessary to enable the proper relief to be given under that law.

Section 790(12) shall apply for the interpretation of this subsection as it applies for the interpretation of that section.

(2) <sup>F324</sup> .....

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[<sup>F325</sup>(2ZA) <sup>F324</sup>.....]

[<sup>F326</sup>(2A) The obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised [<sup>F327</sup>Revenue and Customs official], from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under that Convention; and “the Arbitration Convention” here has the meaning given by section 815B(4).]

(3) Where a person beneficially entitled to income from any securities as defined by section 24 of the Management Act (information as to income from securities) is resident in a territory to which arrangements having effect under section 788 with respect to income tax or corporation tax relate, section 24(3) of that Act shall not exempt any bank [<sup>F328</sup>(within the meaning of that subsection)] from the duty of disclosing to the Board particulars relating to the income of that person.

[<sup>F329</sup>(3A) <sup>F330</sup>.....]

(4) The obligation as to secrecy imposed by any enactments with regard to income tax or corporation tax shall not prevent the disclosure, to any authorised officer of any country to which a declaration made under section 514 of the 1970 Act (agreements about shipping etc.) relates, of such facts as may be necessary to enable relief to be duly given in accordance with the arrangements specified in the declaration.

[<sup>F331</sup>(5) In this section “Revenue and Customs official” has the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005 (confidentiality).]

#### Textual Amendments

- F322** Words in s. 816(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 37\(a\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)
- F323** Word in s. 816(1) substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 88\(2\)\(c\)](#)
- F324** S. 816(2)(2ZA) repealed (19.7.2006) by [Finance Act 2006 \(c. 25\), Sch. 26 Pt. 8\(2\)](#)
- F325** S. 816(2ZA) inserted (28.7.2000) by [Finance Act 2000 \(c. 17\), s. 146\(2\)](#)
- F326** S. 816(2A) inserted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\), s. 51\(2\)](#)
- F327** Words in s. 816(2)(2ZA)(2A) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 37\(b\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)
- F328** Words in s. 816(3) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 202\(a\)](#) (with Sch. 2)
- F329** S. 816(3A) inserted (with effect in accordance with Sch. 37 para. 9 of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 37 para. 2\(1\)\(2\)\(d\)](#)
- F330** S. 816(3A) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 202\(b\), Sch. 3 Pt. 1](#) (with Sch. 2)
- F331** S. 816(5) added (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 37\(c\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

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

- C52** See 1979(C) s.10(4)—*application to capital gains tax.*  
 S. 816 applied (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. 277\(4\), 289](#) (with ss. 60, 101(1), 171, 201(3))  
 S. 816 applied (27.7.1993) by 1993 c. 34, [s. 194\(5\)](#)

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**Marginal Citations**

**M45** Source—1970 s.518; 1972 s.100(1)

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