



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XVIII

#### DOUBLE TAXATION RELIEF

#### CHAPTER II

#### RULES GOVERNING RELIEF BY WAY OF CREDIT

##### *Tax underlying dividends*

#### **799 Computation of underlying tax.**

<sup>M1</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>F1</sup>(a)] is properly attributable to the proportion of the relevant profits represented by the dividend[<sup>F2</sup>, and
- (b) does not exceed the amount calculated by applying the formula set out in subsection (1A) below.]

[<sup>F3</sup>[<sup>F4</sup>(1A) The formula is—

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

where—

D is the amount of the dividend;

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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

M% is the maximum relievable rate;

and for the purposes of this subsection the maximum relievable rate is the rate of corporation tax in force when the dividend was paid.]]

[<sup>F5</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>F6</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—

- (a) if the dividend is paid for a specified period, the profits of that period; [<sup>F7</sup>and]
- (b) <sup>F8</sup> .....
- (c) if the dividend is [<sup>F9</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.

(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 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>F10</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>F11</sup>, impairment losses] or contingencies other than such as is required to be made under that law.

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(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

- F1 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)**
- F2 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)**
- F3 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)**
- F4 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)**
- F5 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)**
- F6 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)**
- F7 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)**
- F8 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
- F9 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)**
- F10 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)**
- F11 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**

#### Marginal Citations

- M1 Source—1970 s.506; 1976 s.50(3)

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

F12 .....

#### Textual Amendments

- F12 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>M2</sup>(1) Where a company resident outside the United Kingdom (“the overseas company”) pays a dividend to a [<sup>F13</sup> company falling within subsection (1A) below (“the relevant company”)] and the overseas company is related [<sup>F14</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—

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- (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>F15</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>F16</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>F17</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 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>F18</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>F19</sup>(aa) if the overseas company is an ADP controlled foreign company as respects any of its accounting periods and the dividend mentioned in subsection (1) above is an ADP dividend of that company (in which case see also subsection (2B)); or]
- (b) in such other cases as may be prescribed by regulations made by the Treasury.]

[<sup>F20</sup>(2B) In any case falling within subsection (2A)(aa) above, section 799(1)(b) applies for the purposes of subsection (2) above as if for section 799(1A) there were substituted—

“(1A) The formula is—

$$\frac{D}{1 - X} \times X$$

where—

D is the amount of the dividend; and

X is the maximum relievable rate, expressed as a decimal fraction;

and for the purposes of this subsection the maximum relievable rate is the rate of corporation tax [<sup>F21</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].”.]

(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

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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>F22</sup>(4A) <sup>F23</sup> .....  
(4B) <sup>F23</sup> .....  
(4C) <sup>F23</sup> .....  
(4D) <sup>F23</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>F24</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>F25</sup>(6) For the purposes of this section—
- (a) a controlled foreign company is an “ADP controlled foreign company” as respects any of its accounting periods if, by virtue only of section 748(1) (a), no apportionment under section 747(3) falls to be made as respects that accounting period;
  - (b) an “ADP dividend” of a controlled foreign company is a dividend by virtue of which the controlled foreign company is an ADP controlled foreign company as respects any of its accounting periods.

- (7) In this section—
- “accounting period”, in relation to a controlled foreign company, has the same meaning as in Chapter 4 of Part 17 (see section 751);
  - “controlled foreign company” has the same meaning as in Chapter 4 of Part 17 (see section 747(2)).]

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### Textual Amendments

- F13** 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)**
- F14** 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)**
- F15** 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)**
- F16** 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)**
- F17** 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)**
- F18** 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)**
- F19** 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)**
- F20** 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)**
- F21** Words in s. 801(2B) substituted (with effect in accordance with s. 57(6) of the amending Act) by Finance Act 2009 (c. 10), **s. 57(4)**
- F22** 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)**
- F23** 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
- F24** 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)**
- F25** 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

- M2** Source—1970 s.508; 1971 s.26(2)

## [<sup>F26</sup>801A] Restriction of relief for underlying tax.

- (1) This section applies where—
- (a) [<sup>F27</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.

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- (2) Where this section applies, the amount of the credit to which [<sup>F28</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.
- (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>F28</sup>the claimant company], a company related to that company or a person connected with [<sup>F28</sup>the claimant company]; and
  - (b) a person who was not under the control of [<sup>F28</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>F29</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>F28</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

- F26** S. 801A inserted (with effect in accordance with s. 90(2) of the amending Act) by Finance Act 1997 (c. 16), s. 90(1)

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- F27** 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)
- F28** 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)
- F29** 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>F30</sup>801B Dividends paid out of transferred profits.**

- (1) This section applies where—
- (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**

- F30** 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>F31</sup>801C Separate streaming of dividend so far as representing an ADP dividend of a CFC.**

- (1) This section applies in any case where—
- (a) by virtue only of section 748(1)(a), no apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company; and
  - (b) one or more of the dividends paid by the controlled foreign company by virtue of which the condition in paragraph (a) above is satisfied are dividends falling within subsection (2) below.



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- (2) A dividend falls within this subsection if, for the purposes of Part I of Schedule 25, the whole or any part of it falls to be treated by virtue of paragraph 4 of that Schedule as paid by the controlled foreign company to a United Kingdom resident.
- (3) If, in a case where this section applies,—
  - (a) an initial dividend is paid to a company resident outside the United Kingdom, and
  - (b) that company, or any other company which is related to it, pays an intermediate dividend which for the purposes of paragraph 4 of Schedule 25 to any extent represents that initial dividend,subsection (4) below shall have effect in relation to the UK recipient concerned.
- (4) Where this subsection has effect, it shall be assumed for the purposes of allowing credit relief under this Part to that UK recipient—
  - (a) that, instead of the intermediate dividend, the dividends described in subsection (5) below had been paid and the circumstances had been as described in subsection (6) or (7) below, as the case may be; and
  - (b) that any tax paid under the law of any territory in respect of the intermediate dividend, or which is underlying tax in relation to that dividend, had instead fallen to be borne accordingly (taking account of any reduction falling to be made under section 799(2)).
- (5) The dividends mentioned in subsection (4)(a) above are—
  - (a) as respects each of the initial dividends which are, for the purposes of paragraph 4 of Schedule 25, to any extent represented by the intermediate dividend, a separate dividend (an “ADP dividend”) representing, and of an amount equal to, so much of that initial dividend as is for those purposes represented by the intermediate dividend; and
  - (b) a further separate dividend (a “residual dividend”) representing, and of an amount equal to, the remainder (if any) of the intermediate dividend.
- (6) As respects each of the ADP dividends, the intermediate company is to be treated as if it were a separate company whose distributable profits are of a constitution corresponding to, and an amount equal to, that of the ADP dividend.
- (7) As respects the residual dividend (if any), the relevant profits out of which it is to be regarded for the purposes of section 799(1) as paid by the intermediate company are, in consequence of subsection (6) above, to be treated as being of such constitution and amount as remains after excluding accordingly so much of those relevant profits as constitute the whole or any part of the distributable profits out of which the ADP dividends are paid.
- (8) If, in a case where this section applies, an intermediate company also pays a dividend which is not an intermediate dividend (an “independent dividend”) and either—
  - (a) that dividend is paid to a United Kingdom resident, or
  - (b) if it is not so paid, a dividend which to any extent represents it is paid by a company which is related to that company and resident outside the United Kingdom to a United Kingdom resident,subsection (9) below shall have effect in relation to the United Kingdom resident.
- (9) Where this subsection has effect, it shall be assumed for the purposes of allowing credit relief under this Part to the United Kingdom resident—

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- (a) that the relevant profits out of which the independent dividend is to be regarded for the purposes of section 799(1) as paid by the intermediate company are, in consequence of subsection (6) above, to be treated as being of such constitution and amount as remains after excluding so much of those relevant profits as constitute the whole or any part of the distributable profits out of which the ADP dividends are paid; and
  - (b) that any tax paid under the law of any territory in respect of the independent dividend, or which is underlying tax in relation to that dividend, had instead fallen to be borne accordingly (taking account of any reduction falling to be made under section 799(2)).
- (10) For the purposes of this section—
- (a) a controlled foreign company is an “ADP controlled foreign company” as respects any of its accounting periods if the condition in paragraph (a) of subsection (1) above is satisfied as respects that accounting period;
  - (b) an “initial dividend” (subject to subsection (14) below) is any of the dividends mentioned in paragraph (b) of subsection (1) above paid by an ADP controlled foreign company; and
  - (c) a “subsequent dividend” is any dividend which, in relation to one or more initial dividends, is the subsequent dividend for the purposes of paragraph 4 of Schedule 25.
- (11) In this section—
- “distributable profits” means a company’s profits available for distribution, determined in accordance with section 799(6);
  - “intermediate company” means any company resident outside the United Kingdom which pays an intermediate dividend;
  - “intermediate dividend” means any dividend which is paid by a company resident outside the United Kingdom and which—
    - (a) for the purposes of paragraph 4 of Schedule 25, to any extent represents one or more initial dividends paid by other companies; and
    - (b) either is the subsequent dividend in the case of those initial dividends or is itself to any extent represented for those purposes by a subsequent dividend;
  - “the UK recipient” means the United Kingdom resident to whom a subsequent dividend is paid.
- (12) Where—
- (a) one company pays a dividend (“dividend A”) to another company, and
  - (b) that other company, or a company which is related to it, pays a dividend (“dividend B”) to another company,
- then, for the purposes of this section, dividend B represents dividend A, and dividend A is represented by dividend B, to the extent that dividend B is paid out of profits which are derived, directly or indirectly, from the whole or part of dividend A.
- (13) Sub-paragraph (2) of paragraph 4 of Schedule 25 (related companies) shall apply for the purposes of this section as it applies for the purposes of that paragraph.
- (14) Where an intermediate company which is an ADP controlled foreign company pays a dividend—

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- (a) by virtue of which (whether taken alone or with other dividends) the condition in subsection (1)(a) above is satisfied as regards an accounting period of the company, but
- (b) which also for the purposes of paragraph 4 of Schedule 25 to any extent represents one or more initial dividends paid by other ADP controlled foreign companies,

the dividend shall not be regarded for the purposes of this section as an initial dividend paid by the company, to the extent that it so represents initial dividends paid by other ADP controlled foreign companies.]

**Textual Amendments**

**F31** 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)

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

<sup>F32</sup> .....

**Textual Amendments**

**F32** 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

**803 Underlying tax reflecting interest on loans.**

<sup>M3</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>F33</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>F34</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>F35</sup>(d) if the company which received the interest or dividends (“the company”) had been resident in the United Kingdom, [<sup>F36</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>F37</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>F38</sup> .....

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- (5) <sup>F38</sup> .....
- (6) <sup>F38</sup> .....
- (7) <sup>F38</sup> .....
- (8) <sup>F38</sup> .....
- (9) <sup>F38</sup> .....

[<sup>F39</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>F40</sup>, for the purposes of that subsection, whether a company is connected with a bank is determined in accordance with section 839.]]

#### Textual Amendments

- F33** 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)
- F34** 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)
- F35** 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)
- F36** 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)
- F37** 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)
- F38** 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
- F39** 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)
- F40** 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

- M3** Source—1982 s.66; 1987 (No.2) s.68

#### [<sup>F41</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.

[ Where—

- <sup>F42</sup>(1A) (a) a company is (within the meaning of section 801) an ADP controlled foreign company as respects any of its accounting periods, and
- (b) the whole or any part of the profits or gains of that accounting period are included in the aggregate profits, or aggregate profits or gains, mentioned in subsection (1) above,

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subsection (2) below shall have effect as if the companies mentioned in subsection (1) above did not include that company.]

(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

- F41** 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)
- F42** 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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