



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

- (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 is properly attributable to the proportion of the relevant profits represented by the dividend.
- (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.
- (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;
 - (b) if the dividend is not paid for a specified period, but is paid out of specified profits, those profits; and

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- (c) if the dividend is paid neither for a specified period nor out of specified profits, 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.

800 Dividends paid between related companies but not covered by arrangements

Where—

- (a) arrangements provide, in relation to dividends of some classes but not in relation to dividends of other classes, that underlying tax is 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 dividends; and
- (b) a dividend is paid which is not of a class in relation to which the arrangements so provide;

then, if the dividend is paid to a company which controls directly or indirectly, or is a subsidiary of a company which controls directly or indirectly, not less than 10 per cent. of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

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

- (1) Where a company resident outside the United Kingdom (“the overseas company”) pays a dividend to a company resident in the United Kingdom (“the United Kingdom company”) and the overseas company is related to the United Kingdom 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.
- (2) Where the overseas company has received a dividend from a third company and the third company is related to the overseas company, then, 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.

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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.
- (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.

802 U.K. insurance companies trading overseas

- (1) Subject to subsection (2) below, where—
 - (a) a company resident in the United Kingdom is charged to tax under Case I of Schedule D in respect of any insurance business carried on by it, and
 - (b) that business or any part of it is carried on through a branch or agency in a territory outside the United Kingdom,then, in respect of dividends referable to that business which are paid to the company by companies resident in that territory, any tax payable by those companies in respect of their profits under the law of that or any other territory outside the United Kingdom, and any United Kingdom income tax or corporation tax so payable, shall, in considering whether any and if so what credit is to be allowed under any arrangements, be taken into account as tax so payable under the law of the first-mentioned territory is taken into account in a case falling within section 799.
- (2) Credit shall not be allowed to a company by virtue of subsection (1) above for any financial year in respect of a greater amount of dividends paid by companies resident in any overseas territory than is equal to any excess of—
 - (a) the relevant fraction of the company's total income in that year from investments (including franked investment income and group income) so far as referable to the business referred to in subsection (1) above;over
 - (b) the amount of the dividends so referable which are paid to it in the year by companies resident in that territory and in respect of which credit may, apart from subsection (1) above, be allowed to it for underlying tax.
- (3) For the purposes of subsection (2) above the relevant fraction, in relation to any overseas territory, is—

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A

B

where—

A is the company's local premium income in the financial year so far as referable to the business referred to in subsection (1) above;

B is the company's total premium income in the financial year so far as referable to that business;

and premium income shall be deemed to be local premium income in so far as it consists of premiums under contracts entered into at or through a branch or agency in that territory by persons not resident in the United Kingdom.

803 Underlying tax reflecting interest on loans

- (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 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 interest on a loan made 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
 - (d) if the company which made the loan had been resident in the United Kingdom, then, in determining its liability to corporation tax, expenditure related to the earning of the interest on the loan would be deductible in computing the profits of the company brought into charge to tax.
- (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, on so much of the interest on the loan as exceeds the amount of the lender's relevant expenditure which is properly attributable to the period for which that interest is paid.
- (4) In subsection (3) above—
 - (a) "interest", subject to subsection (5) below, has the meaning assigned to it by section 798(2); and
 - (b) "the lender's relevant expenditure" means the amount which, if the company referred to in subsection (1)(d) above were resident in the United Kingdom (and liable to tax accordingly) would be its financial expenditure in relation to the loan, as determined in accordance with section 798(6) to (10).
- (5) If, in accordance with subsection (6) or subsection (8) below, the amount of the dividend would be treated for the purposes of corporation tax as increased or reduced by any amount, then the amount which, apart from this subsection, would be the

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- amount of the interest referred to in subsection (3) above shall be taken to be increased or reduced by the same amount as the dividend is so treated as increased or reduced.
- (6) If, in a case where this section applies, the underlying tax is or includes an amount of spared tax, then, for the purposes of corporation tax, the amount which apart from this subsection would be the amount of the dividend shall be treated as increased by an amount equal to so much of that spared tax as does not exceed the permitted amount; but nothing in this subsection prejudices the operation of section 795 in relation to foreign tax which is not spared tax.
- (7) In this section—
- (a) “spared tax” has the same meaning as in section 798; and
 - (b) the permitted amount, in relation to spared tax which is referable to the whole or any part of the interest referred to in subsection (1)(c) above, is an amount which does not exceed—
 - (i) 15 per cent. of the interest to which that spared tax is referable; or
 - (ii) if it is less, the amount of that spared tax which under any arrangements is to be taken into account for the purpose of allowing credit against corporation tax in respect of the dividend concerned.
- (8) If, in a case where this section applies—
- (a) the underlying tax is or includes an amount of tax which is not spared tax, and
 - (b) that amount of tax exceeds 15 per cent. of the interest to which it is referable,
- then, for the purposes of corporation tax, the amount which would apart from this subsection be the amount of the dividend shall be treated as reduced by a sum equal to the excess.
- (9) Where this section applies, the amount of the credit referred to in paragraph (a) of subsection (1) above which is referable to the underlying tax payable as mentioned in paragraph (c) of that subsection shall not exceed 15 per cent. of so much of the interest referred to in that paragraph as is included in the relevant profits of the company paying the dividend; and for the purposes of this subsection—
- (a) “relevant profits” has the same meaning as, by virtue of section 799, it has for the purposes of the computation of underlying tax; and
 - (b) the amount of the interest shall be determined without making any deduction in respect of any foreign tax.
- (10) In subsection (1) above “bank” means a company carrying on, in the United Kingdom or elsewhere—
- (a) a banking business; or
 - (b) another business which includes the making of loans where the circumstances of the business are such that, in determining the liability of the company to corporation tax, expenditure related to the earning of the interest on those loans is deductible in computing the profits brought into charge to tax;
- and section 839 applies for the purposes of subsection (1) above.
- (11) Where the loan referred to in subsection (1)(c) was made pursuant to an agreement entered into before 1st April 1987, subsections (2) to (5) above shall not apply in relation to tax payable as mentioned in subsection (1)(c) above by reference to interest payable before 1st April 1989, but subject to that, this section applies whenever the loan referred to in subsection (1)(c) was made.