



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XVIII

#### DOUBLE TAXATION RELIEF

### CHAPTER III

#### MISCELLANEOUS PROVISIONS

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

(1) In any case where—

- (a) a person is treated under section 714(2) as receiving annual profits or gains on the day an interest period ends; and
- (b) assuming that, in the chargeable period in which the day falls, 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 Case IV or V of Schedule D; 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 profits or gains shall be allowed against any United Kingdom income tax or corporation tax computed by reference to the profits or gains, 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

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- (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 which is treated as reduced by virtue of section 714(5);

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

R is the amount by which it is treated as reduced.

- (3) 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.
- (5) Sections 710 and 711 shall apply for the interpretation of this section.

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

In the case of a person not resident in the United Kingdom who carries on in the United Kingdom a banking business, an insurance business or a business consisting wholly or partly in dealing in securities, receipts of interest or dividend 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 or 436) against income or profits.

In this section “securities” includes stocks and shares.

### **809 Relief in respect of discretionary trusts**

- (1) In any case where—
- (a) a payment made by trustees falls to be treated as a net amount in accordance with section 687(2) and the income arising under the trust 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.

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

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

- (1) Where—
- (a) a person chargeable to tax under Schedule D in respect of a trade is liable to overseas tax in respect of any income arising from the trade, being overseas tax for which relief may be given by way of credit, repayment or set off under the preceding provisions of this Part, and
  - (b) the conditions specified in subsection (2) below are satisfied,
- he may, in claiming the relief in respect of that income, claim a postponement under this section of the relevant capital allowances operating to reduce that income for the purposes of tax for any chargeable period.
- (2) The conditions are—
- (a) that the law under which the overseas tax is chargeable provides for deductions or allowances to be given corresponding to capital allowances, but on a different basis such that they operate to reduce the income in question (if at all) to a less extent than the capital allowances to which the claim relates, but are calculated to operate to a greater extent than the corresponding capital allowances to reduce income arising subsequently; and
  - (b) that the relief falling to be so given in respect of the income in question is less than it would be if the capital allowances to which the claim relates operated to reduce the income to the same extent only as the deductions or allowances so provided for.
- (3) Where a person claims a postponement under this section of capital allowances for any chargeable period, then—
- (a) for the purposes of making the assessment for that period, the amount of those allowances shall be reduced by such amount as may be necessary to secure that they operate to reduce the income only to the extent mentioned in subsection (2)(b) above (or such less amount as the claimant may require); and
  - (b) for the purpose of making the assessment for the following period that amount shall be added to the amount of the allowances for that period, and shall be deemed to be part of those allowances or, if there are no such allowances for that period, shall be deemed to be the allowances for that period.
- (4) For the purposes of any claim under this section—
- (a) there shall be taken into account such only of the relevant capital allowances, and the deductions or allowances operating to reduce the income in question for purposes of the overseas tax, as are calculated to give relief in respect of the same expenditure or the same assets; and
  - (b) no account shall be taken of expenditure incurred or treated for the purposes of Chapter I of Part III of the Finance Act 1971 as incurred on or after 27th October 1970.
- (5) In this section “overseas tax” means tax chargeable under the laws of any territory outside the United Kingdom, and “relevant capital allowances”, in relation to any trade, means capital allowances falling to be made in taxing the trade.

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- (6) This section applies (with any necessary adaptations) in relation to a profession, employment, vocation or office, and in relation to the occupation of woodlands the profits or gains of which are assessable under Schedule D, as it applies in relation to a trade.

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

- (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; and
- (b) shall not affect section 278(3); and
- (c) shall not affect the liability to tax of an overseas life insurance company for any accounting period for which a charge to corporation tax under Case III of Schedule D arises under section 445 in respect of any of its income from the investments of its life assurance fund (excluding the pension fund and general annuity fund, if any) or for which such a charge would arise if there were such income;

and this section has effect subject to section 795(2).

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

- (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 section 231(3) 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 or, where the credit exceeds that income tax, to have the excess paid to it.

- (2) In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom with the government of 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

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- been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.
- (3) 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) 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) 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;
  - (c) section 839 applies;
  - (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) 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 purpose 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 either the following provisions—

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“(3) A company shall be treated as having a qualifying presence in a unitary state if it is subject to tax in such a state for any period ending after the relevant date for which that state charges tax.

(4) For the purposes of subsection (3) above a company shall be regarded as subject to tax in a unitary state if it is liable there to a tax charged on its income or profits by whatever name called and shall be treated as so charged unless it proves otherwise to the satisfaction of the Board.”;

or the following provisions—

“(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—

(a) a company shall be treated as having its principal place of business in a unitary state unless it proves otherwise to the satisfaction of the Board; and

(b) 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) 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) 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.

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

(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 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”.

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- (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) as respects its accounting periods beginning with that in which the excess or additional amount referred to in subsection (1) above was paid and ending with that following that in which the recoverable amount is paid in accordance with the provisions of this section, the company which made the qualifying distribution in respect of which the recipient company received the excess or additional amount shall not be entitled—
    - (i) to set any advance corporation tax paid by it against its liability to corporation tax for such periods in accordance with section 239; nor
    - (ii) to surrender the benefit of the whole or any part of any amount of advance corporation tax to a subsidiary in accordance with section 240 in such periods.
- (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

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such rate of interest as after such deduction shall be equal to the rate of 9 per cent. per annum.

#### **814 Arrangements to avoid section 812**

- (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—
  - (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.

#### **815 Power to inspect documents**

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.



## **816 Disclosure of information**

- (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 persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the government 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) Where any arrangements have effect by virtue of section 788, the obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised officer of the Board, from disclosing to any authorised officer of the government with which the arrangements are made such information as is required to be disclosed under the arrangements.
- (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 from the duty of disclosing to the Board particulars relating to the income of that person.
- (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.