



Finance Act 1998

1998 CHAPTER 36

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

INCOME TAX AND CORPORATION TAX

Transfer pricing, FOREX and financial instruments

108 New regime for transfer pricing etc.

- (1) For sections 770 to 773 of the Taxes Act 1988 (transfer pricing provisions) there shall be substituted the following section—

“770A Provision not at arm’s length.

Schedule 28AA (which deals with provision made or imposed otherwise than at arm’s length) shall have effect.”

- (2) After Schedule 28A to that Act there shall be inserted, as Schedule 28AA to that Act, the Schedule set out in Schedule 16 to this Act.

- (3) In the ^{M1}Finance Act 1993—

- (a) in sections 136(7) and (8) and 136A(5) (application of arm’s length test in computing foreign exchange gains and losses), for the words “has been treated under section 770 of”, in each place where they occur, there shall be substituted “ falls to be treated in accordance with Schedule 28AA to ”; and
- (b) in section 136A(6), for “has at any time in that accrual period been treated under section 770 of” there shall be substituted “ falls in relation to any time in that accrual period to be treated in accordance with Schedule 28AA to ”.

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- (4) In the ^{M2}Finance Act 1996—
- (a) in section 100(3) (imputed interest on loan relationships), for the words from “which, in” to “of those sections” there shall be substituted “ which, in pursuance of Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length), falls to be treated ”; and
 - (b) in paragraph 16 of Schedule 9 (imputed interest)—
 - (i) in sub-paragraph (1), for the words from “sections 770” to “that Act” there shall be substituted “ Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length) ”; and
 - (ii) in sub-paragraph (2), for “Those sections” there shall be substituted “ That Schedule ”.
- (5) Subject to subsection (6) below, this section and Schedule 16 to this Act have effect (in relation to provision made or imposed at any time)—
- (a) for the purposes of corporation tax, as respects accounting periods ending on or after the day appointed under section 199 of the ^{M3}Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions); and
 - (b) for the purposes of income tax, as respects any year of assessment ending on or after that day.
- (6) The Schedule 28AA to the Taxes Act 1988 that is inserted by subsection (2) above shall not, in the case of any potentially advantaged person, apply as respects the consequences at any time of the difference between the actual provision and the arm’s length provision if—
- (a) that time falls before 17th March 2001;
 - (b) the actual provision is a provision made or imposed by means of contractual arrangements entered into by that person before 17th March 1998;
 - (c) the requirements of paragraph 1(1)(b) of Schedule 28AA to that Act (control requirements) are satisfied in the case of the actual provision and that person by reference only to paragraph 4(2)(b) of that Schedule (joint ventures etc.);
 - (d) the rights and obligations of that person by virtue of the actual provision are not ones that have been varied or continued in pursuance of any transaction entered into by that person in the period between 17th March 1998 and that time; and
 - (e) that person is not a party, and has not been a party, to any transaction by virtue of which he could during that period have secured the variation or termination of those rights and obligations.
- (7) Expressions used in subsection (6) above and in Schedule 28AA to the Taxes Act 1988 have the same meanings in that subsection as in that Schedule.

Marginal Citations

- M1** 1993 c. 34.
M2 1996 c. 8.
M3 1994 c. 9.

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109 Abolition of requirements for direction.

- (1) The following provisions of Chapter II of Part II of the ^{M4}Finance Act 1993 (exchange gains and losses) shall cease to have effect—
 - (a) in section 135(1), paragraph (d) (which makes the giving of a direction a condition of disregarding an exchange loss where it is the main benefit), and the word “and” immediately preceding that paragraph;
 - (b) in section 136, the following provisions (which make the giving of a direction by the Board a condition of disregarding or reducing an exchange loss where there is a transaction that is not on arm’s length terms)—
 - (i) paragraph (d) of subsection (1) and the word “and” immediately preceding that paragraph; and
 - (ii) in each of subsections (5) and (9), the words after paragraph (b);
 - (c) in each of subsections (3) and (7) of section 136A, the words after paragraph (b) (which make the giving of a direction by the Board a condition of reducing an initial exchange loss where there is a transaction that is not on arm’s length terms); and
 - (d) in section 137(1), paragraph (d) (which makes the giving of a direction a condition of disregarding an exchange loss on a currency contract which is not on arm’s length terms), and the word “and” immediately preceding that paragraph.
- (2) Accordingly, the word “and” shall be inserted—
 - (a) at the end of section 135(1)(b) of the ^{M5}Finance Act 1993;
 - (b) at the end of section 136(1)(b) of that Act; and
 - (c) at the end of section 137(1)(b) of that Act.
- (3) In section 167(2) of the ^{M6}Finance Act 1994, paragraph (b) (which makes the giving of a direction by the Board a condition of adjusting the amounts brought into account in respect of a relevant transaction which is not on arm’s length terms), and the word “and” immediately preceding that paragraph, shall cease to have effect.
- (4) The preceding provisions of this section shall have effect (in relation to transactions entered into at any time) as respects accounting periods ending on or after the day appointed under section 199 of the ^{M7}Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions).
- (5) Where a direction given on or after 17th March 1998 under—
 - (a) section 135(1)(d), 136(1)(d), (5) or (9), 136A(3) or (7) or 137(1)(d) of the ^{M8}Finance Act 1993, or
 - (b) section 167(2)(b) of the ^{M9}Finance Act 1994,relates to any accounting period ending before the day appointed as mentioned in subsection (4) above, all such adjustments shall be made, whether by assessment, repayment of tax or otherwise, as are necessary to give effect to that direction.

Marginal Citations

- M4** 1993 c. 34.
M5 1993 c. 34.
M6 1994 c. 9.
M7 1994 c. 9.
M8 1993 c. 34.

Status: Point in time view as at 31/07/1998.

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M9 1994 c. 9.

110 Determinations requiring the sanction of the Board.

- (1) This section has effect where a determination requiring the Board's sanction is made for any of the following purposes, that is to say—
 - (a) the giving of a closure notice;
 - (b) the giving of a notice under section 30B(1) of the ^{M10}Taxes Management Act 1970 amending a partnership statement; or
 - (c) the making of a discovery assessment.
- (2) If the closure notice, the notice under section 30B(1) of the ^{M11}Taxes Management Act 1970 or, as the case may be, a notice of the discovery assessment is given to any person—
 - (a) without the determination, so far as it is taken into account in the notice or assessment, having been approved by the Board, or
 - (b) without a copy of the Board's approval having been served on that person at or before the time of the giving of the notice,

the closure notice, notice under section 30B(1) of that Act or, as the case may be, the discovery assessment shall be deemed to have been given or made (and in the case of an assessment notified) in the terms (if any) in which it would have been given or made had that determination not been taken into account.
- (3) For the purposes of this section the Board's approval of a determination requiring their sanction—
 - (a) must be given specifically in relation to the case in question and must apply to the amount determined; but
 - (b) subject to that, may be given by the Board (either before or after the making of the determination) in any such form or manner as they may determine.
- (4) In this section references to a determination requiring the Board's sanction are references (subject to subsection (5) below) to any of the following determinations, that is to say—
 - (a) a determination of an amount falling to be brought into account for tax purposes in respect of any assumption made by virtue of paragraph 1(2) of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length);
 - (b) a determination of the amount of any adjustment falling to be made for tax purposes in respect of the disregarding or reduction, in accordance with section 135, 136, 136A or 137 of the ^{M12}Finance Act 1993 (main benefit and arm's length tests in relation to foreign exchange gains and losses), of any exchange loss, or of any exchange gain;
 - (c) a determination of the amount of any adjustment falling to be made for tax purposes in respect of any deduction from, or addition to, any amount in accordance with section 167 of the ^{M13}Finance Act 1994 (arm's length test in relation to financial instruments).
- (5) For the purposes of this section a determination shall be taken, in relation to a closure notice, a notice under section 30B(1) of the ^{M14}Taxes Management Act 1970 or a discovery assessment, not to be a determination requiring the Board's sanction if—
 - (a) an agreement about the matters to which the determination relates has been made between an officer of the Board and the person in whose case it is made;

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- (b) that agreement is in force at the time of the giving of the notice or, as the case may be, of any notice of the assessment; and
 - (c) the matters to which the agreement relates include the amount determined.
- (6) For the purposes of subsection (5) above an agreement made between an officer of the Board and any person (“the taxpayer”) in relation to any matter shall be taken to be in force at any time if, and only if—
 - (a) the agreement is one which has been made or confirmed in writing;
 - (b) that time is after the end of the period of thirty days beginning—
 - (i) in the case of an agreement made in writing, with the day of the making of the agreement, and
 - (ii) in any other case, with the day of the agreement’s confirmation in writing;and
 - (c) the taxpayer has not, before the end of that period of thirty days, served a notice on an officer of the Board stating that he is repudiating or resiling from the agreement.
- (7) The references in subsection (6) above to the confirmation in writing of an agreement are references to the service on the taxpayer by an officer of the Board of a notice in writing—
 - (a) stating that the agreement has been made; and
 - (b) setting out the terms of the agreement.
- (8) The matters that may be questioned on so much of any appeal by virtue of any provision of the ^{M15}Taxes Management Act 1970 or Schedule 18 to this Act as relates to a determination the making of which has been approved by the Board for the purposes of this section shall not include the Board’s approval, except to the extent that the grounds for questioning the approval are the same as the grounds for questioning the determination itself.
- (9) In this section—
 - “closure notice” means—
 - (a) a notice under section 28A(5) or 28B(5) of the ^{M16}Taxes Management Act 1970 stating the conclusions of an officer of the Board in relation to any self-assessment, partnership statement, claim or election; or
 - (b) a closure notice under paragraph 32 of Schedule 18 to this Act in relation to an enquiry into a company tax return;
 - “discovery assessment” means—
 - (a) an assessment under section 29 of the ^{M17}Taxes Management Act 1970; or
 - (b) a discovery assessment or discovery determination under paragraph 41 of Schedule 18 to this Act (including an assessment by virtue of paragraph 52 of that Schedule).
- (10) This section has effect—
 - (a) for the purposes of corporation tax, as respects accounting periods ending on or after the day appointed under section 199 of the ^{M18}Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions); and
 - (b) for the purposes of income tax, as respects any year of assessment ending on or after that day.

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Marginal Citations

- M10** 1970 c. 9.
- M11** 1970 c. 9.
- M12** 1993 c. 34.
- M13** 1994 c. 9.
- M14** 1970 c. 9.
- M15** 1970 c. 9.
- M16** 1970 c. 9.
- M17** 1970 c. 9.
- M18** 1994 c. 9.

111 Notice to potential claimants.

- (1) Where—
 - (a) a relevant notice is given to any person,
 - (b) that notice, or anything contained in it, takes account of a determination of an amount falling to be brought into account for tax purposes in respect of any assumption made by virtue of paragraph 1(2) of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length), and
 - (c) it appears to an officer of the Board that there is a person who is or may be a disadvantaged person by reference to the subject-matter of that determination,
 the officer shall give a notice under this section to the person who so appears to him.
- (2) A notice under this section is a notice containing particulars of the determination by reference to which the person to whom the notice is given appears to an officer of the Board to be a person who is or may be a disadvantaged person.
- (3) Where, in any case, there is a contravention of subsection (1) above or the notice required by that subsection is given after the giving of the relevant notice, the Board—
 - (a) shall consider whether, as a result of the contravention, any person has been prejudiced with respect to the making or amendment of a claim for the purposes of paragraph 6 of Schedule 28AA to the Taxes Act 1988 (claim for relief by party disadvantaged by transfer pricing adjustment), and
 - (b) may, if they think fit, treat the period for the making or amendment of such a claim in that case as extended by such further period as appears to them to be appropriate.
- (4) Where, in a case in which a relevant notice is given to any person, there is a contravention of this section, that contravention shall not affect the validity of that notice or of any determination to which that notice relates.
- (5) For the purposes of this section a person is a disadvantaged person by reference to the subject-matter of a determination such as is mentioned in subsection (1)(b) above if, and only if—
 - (a) he is entitled, in consequence of the making of the determination, to make a claim for the purposes of paragraph 6 of Schedule 28AA to the Taxes Act 1988;
 - (b) he is entitled, in consequence of the making of the determination, to amend such a claim; or

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- (c) he will be entitled, by virtue of paragraph 12(3) of that Schedule, to appear and be heard by the Special Commissioners in any proceedings on an appeal relating to that determination.
- (6) In this section “relevant notice” means any of the following, that is to say—
- (a) a notice under section 28A(5) or 28B(5) of the ^{M19}Taxes Management Act 1970 stating the conclusions of an officer of the Board in relation to any self-assessment, partnership statement, claim or election;
 - (b) a closure notice under paragraph 32 of Schedule 18 to this Act in relation to an enquiry into a company tax return;
 - (c) a notice of assessment under section 29 of that Act of 1970;
 - (d) a notice of any discovery assessment or discovery determination under paragraph 41 of Schedule 18 to this Act (including any notice of an assessment by virtue of paragraph 52 of that Schedule);
 - (e) a notice under section 30B(1) of that Act of 1970 amending a partnership statement.
- (7) This section applies to notices given at any time after the day appointed under section 199 of the ^{M20}Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions).

Modifications etc. (not altering text)

C1 S. 111 modified (27.7.1999) by 1999 c. 16, s. 87(5)

Marginal Citations

M19 1970 c. 9.

M20 1994 c. 9.

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