Income Tax (Trading and Other Income) Act 2005

2005 CHAPTER 5

PART 4

SAVINGS AND INVESTMENT INCOME

CHAPTER 3

DIVIDENDS ETC. FROM UK RESIDENT COMPANIES [F1 AND TAX [F1 TREATED AS PAID] IN RESPECT OF CERTAIN DISTRIBUTIONS]

[F1 Anti-avoidance

Textual Amendments

F1 S. 401C and cross-heading inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 133**

401C Temporary non-residents

(1) This section applies if—

(a) an individual is temporarily non-resident,

(b) a relevant distribution is made or treated as made to the individual in the temporary period of non-residence,

(c) the tax year in which it is made or treated as made ("the distribution year") is a tax year for which the individual is UK resident, and

(d) the amount of income tax charged on the distribution under this Chapter is less than it would have been if the existence of double taxation relief arrangements were disregarded.

Changes to legislation: *There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Cross Heading: Anti-avoidance. (See end of Document for details)*

(2) Subsections (3) and (4) have effect in cases where the distribution year is not the year of return.

(3) The total income (see Step 1 of the calculation in section 23 of ITA 2007) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount on which tax would be charged under this Chapter in respect of the distribution disregarding any double taxation relief arrangements.

(4) But the notional UK tax on that distribution is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.

(5) If the distribution year is the year of return, the tax charged under this Chapter in respect of the relevant distribution is to be charged and assessed without regard to the existence of double taxation relief arrangements.

(6) For the purposes of this section, a dividend or other distribution is a "relevant distribution" if—
   (a) it is a dividend or other distribution of a close company, and
   (b) it is made or treated as made to the individual because the individual was at a relevant time—
      (i) a material participator in the company, or
      (ii) an associate of a material participator in the company.

(7) But a dividend or other distribution within subsection (6) in the form of a cash dividend is not a "relevant distribution" to the extent that the dividend is paid in respect of post-departure trade profits.

(8) "Post-departure trade profits" are—
   (a) trade profits of the close company arising in an accounting period that begins after the start of the temporary period of non-residence, and
   (b) so much of any trade profits of the close company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.

(9) The extent to which a dividend is paid in respect of post-departure trade profits is to be determined on a just and reasonable basis.

(10) The "notional UK tax" on the relevant distribution is so much of the income tax paid by the individual for the distribution year as is attributable on a just and reasonable basis to the relevant distribution.

(11) If section 393 applies, references in this section to a distribution being made to the individual are to a cash dividend being paid over to the individual.

(12) In this section—

"associate" and "participator" have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);

"material participator" means a participator who has a material interest in the company, as defined in section 457 of that Act;

"relevant time" means—
   (a) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
   (b) any time in one or more of the 3 tax years preceding that year;

"trade profits of the close company" means the profits of any trade carried on by the close company, as calculated in accordance with Part 3 of CTA 2009 (trading income).**]**

Changes to legislation:
There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Cross Heading: Anti-avoidance.