SCHEDULES

SCHEDULE 14

Section 34

CORPORATION TAX TREATMENT OF COMPANY DISTRIBUTIONS

PART 1

INSERTION OF NEW PART 9A OF CTA 2009

1 In CTA 2009, after Part 9 insert—

"PART 9A

COMPANY DISTRIBUTIONS

CHAPTER 1

THE CHARGE TO TAX

Charge to tax on distributions received

931A (1) The charge to corporation tax on income applies to any dividend or other distribution of a company, but only if the distribution is not exempt.

(2) Subsection (1) does not apply in the case of a distribution of a capital nature.

(3) For provision as to whether a distribution is exempt, see—
Chapter 2 (distributions received by small companies), and
Chapter 3 (distributions received by companies that are not small).

CHAPTER 2

EXEMPTION OF DISTRIBUTIONS RECEIVED BY SMALL COMPANIES

Exemption from charge to tax

931B A dividend or other distribution of a company that is received in an accounting period of the recipient in which the recipient is a small company is exempt if—

(a) the payer is a resident of (and only of) the United Kingdom or a qualifying territory at the time that the distribution is received,

(b) the distribution is not of a kind mentioned in paragraph (d) or (e) of section 209(2) of ICTA (certain non-dividend distributions),

(c) no deduction is allowed to a resident of any territory outside the United Kingdom under the law of that territory in respect of the distribution, and
(d) the distribution is not made as part of a tax advantage scheme.

Meaning of "qualifying territory"

931C (1) For the purpose of section 931B a territory is a "qualifying territory" if—
(a) arrangements to which section 788 of ICTA applies ("double taxation relief arrangements") have effect in relation to the territory, and
(b) the arrangements contain a non-discrimination provision.

(2) The Treasury may by regulations—
(a) provide that a territory specified in or of a description specified in the regulations that does not satisfy subsection (1)(a) or (b) is a qualifying territory for the purpose of section 931B, and
(b) provide that a territory so specified or described that satisfies subsection (1)(a) and (b) is not a qualifying territory for that purpose.

(3) For the purpose of section 931B a company is a resident of a territory if, under the laws of the territory, the company is liable to tax there—
(a) by reason of its domicile, residence or place of management, but
(b) not in respect only of income from sources in that territory or capital situated there.

(4) In subsection (1) "non-discrimination provision", in relation to double taxation relief arrangements, means a provision to the effect that nationals of a state which is a party to those arrangements (a "contracting state") are not to be subject in any other contracting state to—
(a) any taxation, or
(b) any requirement connected with taxation,

which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.

(5) In subsection (4) "national", in relation to a contracting state, includes—
(a) an individual possessing the nationality or citizenship of the contracting state, and
(b) a legal person, partnership or association deriving its status as such from the laws in force in that contracting state.

(6) Regulations under this section may—
(a) describe a territory by reference to the double taxation relief arrangements for the time being in force in relation to the territory,
(b) make different provision in relation to different descriptions of company, and
(c) make provision having effect in relation to accounting periods current on the day on which the regulations are made.

CHAPTER 3

EXEMPTION OF DISTRIBUTIONS RECEIVED BY COMPANIES THAT ARE NOT SMALL

Exemption from charge to tax

931D A dividend or other distribution of a company that is received in an accounting period of the recipient in which the recipient is not a small company is exempt if—
(a) the distribution falls into an exempt class (see sections 931E to 931Q),
(b) the distribution is not of a kind mentioned in paragraph (d) or (e) of section 209(2) of ICTA (certain non-dividend distributions), and
(c) no deduction is allowed to a resident of any territory outside the United Kingdom under the law of that territory in respect of the distribution.

Exempt classes

Distributions from controlled companies

931E (1) A dividend or other distribution falls into an exempt class if condition A or B is met.

(2) Condition A is that the recipient controls the payer.

(3) Condition B is that—
(a) the recipient is one of two persons who, taken together, control the payer,
(b) the recipient is a person in whose case the 40% test in section 755D(3) of ICTA is satisfied, and
(c) the other is a person in whose case the 40% test in section 755D(4) of ICTA is satisfied.

(4) Section 755D of ICTA (meaning of “control” etc) applies for the purposes of this section.

(5) As so applied, that section has effect with the omission of subsection (6)(c) and (d).

Distributions in respect of non-redeemable ordinary shares

931F A dividend or other distribution falls into an exempt class if it is made in respect of a share that—
(a) is an ordinary share, and
(b) is not redeemable.

Distributions in respect of portfolio holdings

931G (1) A dividend or other distribution falls into an exempt class if the recipient—

(a) holds less than 10% of the issued share capital of the payer,
(b) is entitled to less than 10% of the profits available for distribution to holders of the issued share capital of the payer, and
(c) would be entitled on a winding up to less than 10% of the assets of the company available for distribution to holders of the issued share capital of the payer.

(2) Where the payer has more than one class of share, references in subsection (1) to the issued share capital of the payer are to issued share capital of the same class as the share in respect of which the distribution is made.

(3) For the purposes of this section shares are not of the same class if the amounts paid up on them (otherwise than by way of premium) are different.

Dividends derived from transactions not designed to reduce tax

931H (1) A dividend falls into an exempt class if it is paid in respect of relevant profits.

(2) In this section "relevant profits" means any profits available for distribution at the time that the dividend is paid, other than profits that reflect the results of a transaction, or of one or more of a series of transactions, where—
(a) the transaction or series of transactions achieve a reduction (other than a negligible reduction) in United Kingdom tax, and
(b) the purpose or one of the main purposes of that transaction or series of transactions is to achieve that reduction.

(3) A dividend that falls into an exempt class otherwise than by virtue of this section is for the purposes of this section treated, so far as possible, as paid in respect of relevant profits.

(4) Any other dividend is for the purposes of this section treated, so far as possible, as paid in respect of profits other than relevant profits.

(5) Where by virtue of subsection (4) part of a dividend is treated as paid in respect of relevant profits and part is treated as paid in respect of profits other than relevant profits, the two parts are treated for the purposes of this Part and Part 18 of ICTA (double taxation relief) as separate dividends.

Dividends in respect of shares accounted for as liabilities

931I A dividend falls into an exempt class if the dividend is paid in respect of a share to which, at the time of the payment, section 521C (shares accounted for as liabilities treated as loan relationships) does not apply only because the condition in subsection (1)(f) of that section is not met.

Exempt classes: anti-avoidance

Schemes involving manipulation of controlled company rules

931J (1) This section applies to a dividend that would, apart from this section, fall into an exempt class by virtue of section 931E.

(2) The dividend does not fall into an exempt class by virtue of that section if—

(a) the dividend is paid as part of a scheme the main purpose, or one of the main purposes, of which is to secure that dividends of the payer received by the recipient fall into an exempt class by virtue of that section, and

(b) the following condition is met.

(3) The condition is that the dividend is paid in respect of pre-control profits.

(4) A dividend that falls into an exempt class otherwise than by virtue of section 931E is for the purposes of this section treated, so far as possible, as paid in respect of profits other than pre-control profits.

(5) Any other dividend is for the purposes of this section treated, so far as possible, as paid in respect of pre-control profits.

(6) In this section "pre-control profits" means any profits available for distribution at the time the dividend is paid that arose at a time when neither condition A nor condition B in section 931E was met.

(7) Where—

(a) the condition in subsection (2)(a) is met, and

(b) by virtue of subsection (5) part of a dividend is treated as paid in respect of pre-control profits and part is treated as paid in respect of profits other than pre-control profits,

the two parts are treated for the purposes of this Part and Part 18 of ICTA (double taxation relief) as separate dividends.

Schemes involving quasi-preference or quasi-redeemable shares

931K (1) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class by virtue of section 931F.

(2) The distribution does not fall into an exempt class by virtue of that section if—

(a) the distribution is made as part of a scheme the main purpose, or one of the main purposes, of which is to secure that distributions of the payer received by the recipient fall into an exempt class by virtue of that section, and

(b) the following condition is met.

(3) The condition is that the distribution is made in respect of a share that—

(a) would not be an ordinary share, or

(b) would be redeemable,

were the rights under the scheme of each relevant person to be attached to the share.

Schemes involving manipulation of portfolio holdings rule

931L (1) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class by virtue of section 931G.

(2) The distribution does not fall into an exempt class by virtue of that section if—

(a) the distribution is made as part of a scheme the main purpose, or one of the main purposes, of which is to secure that distributions of the payer received by the recipient fall into an exempt class by virtue of that section, and

(b) the following condition is met.

(3) The condition is that the distribution would not fall into an exempt class by virtue of section 931G if the reference in subsection (1) of that section to the recipient were to all relevant persons taken together.

Schemes in the nature of loan relationships

931M (1) This section applies to a dividend or other distribution that does not fall into an exempt class by virtue of section 931E but would, apart from this section, fall into an exempt class otherwise than by virtue of that section.

(2) The distribution does not fall into an exempt class if—

(a) the distribution is made as part of a tax advantage scheme, and

(b) conditions A to C are met.

(3) Condition A is that the distribution constitutes part of a return in relation to an amount that is produced by the scheme for a relevant person, or two or more relevant persons taken together.

(4) Condition B is that the return is economically equivalent to interest.

(5) For this purpose a return produced for a person or persons by a scheme in relation to an amount is "economically equivalent to interest" if (and only if)—

(a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,

(b) it is at a rate reasonably comparable to a commercial rate of interest, and

(c) at the time the scheme is entered into by the person or any of the persons, there is no practical likelihood that it will cease to be produced in accordance with the scheme.

(6) Condition C is that there is a connection between the payer and the recipient for the accounting period of the payer in which the distribution is made.

(7) Section 466 (companies connected for an accounting period) applies for the purposes of subsection (6) as if that subsection were a provision of Part 5 to which that section is applied (but this does not affect the application of section 1316(1) (meaning of connected persons) for the purposes of any other provision of this Part).

Schemes involving distributions for which deductions are given

931N (1) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class.

(2) The distribution does not fall into an exempt class if—

(a) the distribution is made as part of a tax advantage scheme, and

(b) the following condition is met.

(3) The condition is that a deduction is allowed to a resident of any territory outside the United Kingdom under the law of that territory in respect of an amount determined by reference to the distribution.

Schemes involving payments for distributions

931O (1) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class.

(2) The distribution does not fall into an exempt class if—

(a) the distribution is made as part of a tax advantage scheme, and

(b) the following condition is met.

(3) The condition is that the scheme includes a payment, or the giving up of a right to income, by a relevant person where—

(a) the payment is made, or the right to income is given up, under a liability incurred for consideration in money or money's worth all or any of which consists of, or of the right to receive, the distribution, and

(b) in the case of a payment, the conditions in subsections (2) and (4) to (7) of section 1301 (restriction of deductions for annual payments) apply to the payment.

Schemes involving payments not on arm's length terms

931P (1) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class.

(2) The distribution does not fall into an exempt class if—

(a) the distribution is made as part of a tax advantage scheme, and

(b) the following condition is met.

(3) The condition is that—

(a) the scheme includes a payment or receipt, or the giving up of a right to income, by a relevant person in respect of goods or services, and

(b) the amount of the payment or receipt, or the amount of income given up, differs from the amount the relevant person would have paid, received or given up in respect of those goods or services had the distribution not been made.

(4) This section does not apply to a scheme that consists of a transaction or series of transactions in relation to which Schedule 28AA to ICTA (provision not at arms length between parties under common control) applies.

Schemes involving diversion of trade income

931Q (1) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class.

(2) The distribution does not fall into an exempt class if—

(a) the distribution is made as part of a scheme entered into by the recipient and another relevant person ("C"),

(b) if C had received the distribution, it would be reasonable to assume that the distribution would be dealt with under Part 3 (trading income), and

(c) the main purpose, or one of the main purposes, of the scheme is to produce the result that the distribution is dealt with under this Part because it is received by the recipient.

(3) For the purposes of subsection (2)(b) it is to be assumed that, in the case of any relevant transaction to which a relevant person other than C is a party, C were that party to that transaction.

(4) In this section "relevant transaction" means any of the transactions giving rise to the distribution.

CHAPTER 4

SUPPLEMENTARY

Election that distribution should not be exempt

Election that distribution should not be exempt

931R(1) This section applies where, apart from this section, a distribution ("the distribution") would be exempt.

(2) If the recipient so elects, the distribution is not exempt.

(3) An election under this section must be made on or before the second anniversary of the end of the accounting period in which the distribution is received.

(4) Subsection (5) applies where the distribution is a dividend that is treated for certain purposes of Part 18 of ICTA (double taxation relief) as two separate dividends by virtue of section 801C of that Act (separate streaming of dividend so far as representing an ADP dividend of a CFC).

(5) If the recipient so elects—

(a) the distribution is to be treated for the purposes of this Part as if it were an ADP dividend and a separate residual dividend as provided for in that section of that Act, and

(b) the ADP dividend is not exempt.

(6) The reference in subsection (4) to section 801C of ICTA is to that section as it continues to have effect in accordance with paragraph 8(1) of Schedule 16 to FA 2009 in relation to dividends paid on or after 1 July 2009 for accounting periods beginning before that day.

Interpretation

Meaning of "small company"

931S (1) For the purposes of this Part a company is a "small company" in an accounting period if it is in that period a micro or small enterprise, as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003.

(2) But a company is not a "small company" in an accounting period if it is at any time in that period—

(a) an open-ended investment company,

(b) an authorised unit trust scheme,

(c) an insurance company, or

(d) a friendly society.

(3) In subsection (2)—

"open-ended investment company" has the meaning given by section 236 of FISMA 2000;

"authorised unit trust scheme" means a unit trust scheme (within the meaning given by section 237 of FISMA 2000) in relation to which a order under section 243 of that Act (authorisation orders) is in force;

"insurance company" has the meaning given by section 431 of ICTA;

"friendly society" has the meaning given by section 466(2) of ICTA.

Meaning of "payer", "recipient" and "relevant person"

931T In this Part—

"the payer", in relation to a distribution, means the company that makes the distribution;

"the recipient", in relation to a distribution, means the company that receives the distribution;

"a relevant person", in relation to a distribution, means—

(a) the company that receives the distribution, or

(b) any person connected with that company.

Meaning of "ordinary share" and "redeemable"

931U (1) In this Part "ordinary share" means a share that does not carry any present or future preferential right to dividends or to a company's assets on its winding up.

(2) A share is regarded as "redeemable" for the purposes of this Part only if it is redeemable as a result of its terms of issue (or any collateral arrangements)—

(a) requiring redemption,

(b) entitling the holder to require redemption, or

(c) entitling the issuing company to redeem.

Meaning of "scheme" and "tax advantage scheme"

931V (1) For the purposes of this Part—

"scheme" includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;

"tax advantage scheme" means a scheme the main purpose, or one of the main purposes, of which is to obtain a tax advantage (other than a negligible tax advantage).

(2) In this section "tax advantage" has the meaning given by section 840ZA of ICTA.

Boundary provisions

Provisions which must be given priority over this Part

931W (1) Any income so far as it falls within—

(a) this Part, and

(b) Chapter 2 of Part 3 (income taxed as trade profits),

is dealt with under Part 3.

(2) Any income so far as it falls within—

(a) this Part, and

(b) Chapter 3 of Part 4 (profits of property businesses) so far as the Chapter relates to a UK property business,

is dealt with under Part 4.

(3) Any income so far as it falls within—

(a) this Part, and

(b) Chapter 1 of Part 12 of ICTA (insurance companies),

is dealt with under that Chapter."

PART 2

OTHER AMENDMENTS

ICTA

2 ICTA is amended as follows.

3 In section 13(7) (small companies' relief), omit "resident in the United Kingdom".

4 (1) Section 505(1)(c) (charitable companies: general) is amended as follows.

(2) After sub-paragraph (ii) insert—

"(iizza) from tax under Part 9A of CTA 2009 (company distributions),".

(3) Omit sub-paragraph (iib).

5 (1) Section 95ZA (taxation of UK distributions received by insurance companies) is amended as follows.

(2) In subsection (1), for "section 1285" substitute " section 130(2) ".

(3) In subsection (2)(a), omit "resident in the United Kingdom".

F1 6 . . . .

Textual Amendments

F1 Sch. 14 para. 6 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

7 In section 795 (double taxation relief: computation of income subject to foreign tax), omit subsection (3A).

F2 8 . . . .

Textual Amendments

F2 Sch. 14 para. 8 repealed (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 10 Pt. 1** (with Sch. 9 paras. 1-9, 22)

9 Omit sections 806A to 806K (double taxation relief in relation to foreign dividends: onshore pooling and utilisation of eligible unrelieved foreign tax).

10 In section 826 (interest on tax overpaid), omit subsection (7BC).

F3 11 . . . .

Textual Amendments

F3 Sch. 14 para. 11 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F4 12 . . . .

Textual Amendments

F4 Sch. 14 para. 12 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

13 In paragraph 5(3)(c) of Schedule 27 (distributing funds: United Kingdom equivalent profits)—

(a) for "section 1285" substitute " Chapter 2 or 3 of Part 9A ", and

(b) omit "in like manner as if they were dividends or distributions of a company resident outside the United Kingdom".

F5 14 . . . .

Textual Amendments

F5 Sch. 14 para. 14 repealed (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 10 Pt. 2** (with Sch. 9 paras. 1-9, 22)

FA 1989

15 FA 1989 is amended as follows.

16 (1) Section 85A (life assurance: excess adjusted Case I profits) is amended as follows.

(2) In paragraph (a) of subsection (6), for "distributions received by the company in the accounting period from companies resident in the United Kingdom" substitute " non-taxable distributions received by the company in the accounting period ".

(3) After that subsection insert—

"(6A) In this section "non-taxable distribution" means—

(a) a distribution that is exempt for the purposes of Part 9A of the Corporation Tax Act 2009 (company distributions), and

(b) does not include any amount withheld from the distribution on account of tax payable under the laws of a territory outside the United Kingdom."

17 (1) Section 89 (life assurance: policy holders' share of profits) is amended as follows.

(2) In subsection (2)(b), for "distributions received from companies resident in the United Kingdom" substitute " non-taxable distributions received ".

(3) In subsection (7), after the definition of "Case I profits" insert—

""non-taxable distribution" has the same meaning as in section 85A."

FA 1994

18 In section 219 of FA 1994 (taxation of profits of Lloyd's underwriters etc)—

(a) in subsection (3), omit "Subject to subsection (4A) below,", and

(b) omit subsections (4), (4A) and (4C).

FA 2006

F6 19 . . . .

Textual Amendments

F6 Sch. 14 para. 19 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

CTA 2009

20 CTA 2009 is amended as follows.

21 In section 1(2) (overview of Act), before the "and" at the end of paragraph (f) insert—

"(fa) Part 9A (company distributions),".

22 For section 130 (traders receiving distributions etc) substitute—

"Insurers

130 Insurers receiving distributions etc

(1) This section applies for the purpose of calculating the trading profits of—

(a) insurance business other than life assurance business, or

(b) any category of such business.

(2) A receipt that is exempt for the purposes of Part 9A (company distributions) is not brought into account in calculating the profits of the trade."

23 In section 932(1) (overview of Part 10), omit paragraph (a).

24 Omit Chapter 2 of Part 10 (taxation of dividends from non-UK resident companies).

25 (1) Section 974 (charge to tax in relation to sale of foreign dividend coupons) is amended as follows.

(2) In subsection (3)(a), after "realisation of" insert " taxable ".

(3) In subsection (4), after "sale of" insert " taxable ".

(4) After subsection (4) insert—

"(4A) For the purposes of subsections (3) and (4) a dividend coupon is "taxable" if the associated dividend would not have been exempt for the purposes of Part 9A (company distributions) had it been paid to the holder of the shares."

26 In section 982(1)(a) and (2)(a) (boundary provisions for Part 10), omit "2,".

27 Omit section 1285 (exemption for distributions of UK resident companies).

28 In section 1310(4) (orders and regulations subject to affirmative resolution procedure in House of Commons), before paragraph (a) insert—

"(za) section 931C (meaning of "qualifying territory"),".

29 In Schedule 4 (index of defined expressions), insert at the appropriate places—

"ordinary share (in Part 9A)	section 931U";
"the payer (in Part 9A)	section 931T";
"the recipient (in Part 9A)	section 931T";
"redeemable (in Part 9A)	section 931U";
"a relevant person (in Part 9A)	section 931T";

"scheme (in Part 9A)	section 931V";
"small company (in Part 9A)	section 931S";
"tax advantage scheme (in Part 9A)	section 931V".

Consequential repeals

30 In consequence of the amendments made by this Schedule, omit—
(a) in F(No.2)A 1997, section 22(2) and (3)(a),
(b) in FA 2000, in Schedule 30, paragraphs 8(4)(c), 21 and 22,
(c) in FA 2001, in Schedule 27, paragraphs 1(3), 4 and 5,
(d) in FA 2008, in Schedule 39, paragraph 25, and
(e) in CTA 2009, in Schedule 1, paragraphs 174(4)(c), 252 to 254 and 392(4) and (5).

PART 3

COMMENCEMENT ETC

Commencement

31 The amendments made by this Schedule have effect in relation to distributions paid on or after 1 July 2009 ("the commencement date").

Transitional provision

32 (1) This paragraph contains transitional provision in relation to the commencement of Part 9A of CTA 2009 (as inserted by paragraph 1).

(2) In section 931H—
(a) a reference to a transaction that is one of a series of transactions does not include a transaction where each transaction in the series was entered into more than 12 months before the commencement date,
(b) a reference to any other transaction does not include a transaction entered into more than 12 months before the commencement date, and
(c) a reference to a dividend that falls into (or does not fall into) an exempt class otherwise than by virtue of that section is, in relation to a dividend paid before the commencement date, to a dividend that would have so fallen (or not so fallen) had that section had effect in relation to the dividend.

(3) In section 931J—
(a) a reference to profits available for distribution that arose at any time does not include such profits that arose in a period of account ending more than 12 months before the commencement date, and
(b) a reference to a dividend that falls into (or does not fall into) an exempt class otherwise than by virtue of section 931E is, in relation to a dividend paid

before the commencement date, to a dividend that would have so fallen (or not so fallen) had that section had effect in relation to the dividend.