



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 2

DOUBLE TAXATION RELIEF

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DOUBLE TAXATION RELIEF BY WAY OF CREDIT

Tax underlying dividends: restriction of relief, and particular cases

67 Restriction of relief if underlying tax at rate higher than rate of corporation tax

- (1) Subsection (6) applies if—
 - (a) conditions A and B are met, and
 - (b) one of conditions C and D is met.
- (2) Condition A is that a company (“the claimant company”) makes a claim for an allowance by way of credit in accordance with this Part.
- (3) Condition B is that the claim relates to underlying tax on a dividend paid to the claimant company by a company resident outside the United Kingdom (“the overseas company”).
- (4) Condition C is that the underlying tax is, or includes, an amount in respect of tax payable at a high rate by the overseas company and—
 - (a) that amount would not be, or would not be included in, the underlying tax, or
 - (b) any part of that amount would not be included in the underlying tax, but for the existence of, or but for there having been, an avoidance scheme (see section 68).

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- (5) Condition D is that—
- (a) there is a dividend-paying chain (see section 64) in which—
 - (i) the first company is the claimant company, and
 - (ii) the second company is the overseas company, and
 - (b) the underlying tax is, or includes, an amount in respect of tax payable at a high rate by a company lower in the chain than the overseas company and—
 - (i) that amount would not be, or would not be included in, the underlying tax, or
 - (ii) any part of that amount would not be included in the underlying tax, but for the existence of, or but for there having been, an avoidance scheme (see section 68).
- (6) The amount of credit to which the claimant company is entitled on the claim is to be determined as if the tax payable at a high rate had instead been tax at the relievable rate.
- (7) For the purposes of this section, tax payable by a company is “tax payable at a high rate” so far as the amount payable exceeds the amount that would represent tax at the relievable rate on the profits of the company which, for the purposes of this Part, are taken to bear the payable tax.
- (8) In this section “the relievable rate” means the rate of corporation tax in force when the dividend mentioned in subsection (3) was paid.

68 Meaning of “avoidance scheme” in section 67

- (1) In section 67 “avoidance scheme” means any scheme or arrangement in respect of which each of conditions A to C is met.
- (2) Condition A is that the purpose, or one of the main purposes, of the scheme or arrangement is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.
- (3) Condition B is that the parties to the scheme or arrangement include—
- (a) the company which is the claimant company for the purposes of section 67,
 - (b) a company related to the claimant company, or
 - (c) a person connected with the claimant company.
- (4) Condition C is that the parties to the scheme or arrangement include a person who was not under the control of the claimant company at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.
- (5) For the purposes of subsection (3)(b), a company (“R”) is related to the claimant company if the claimant company—
- (a) controls directly or indirectly, or
 - (b) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in R.
- (6) For the purposes of subsection (3)(c), whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.
- (7) For the purposes of subsection (4), a person who is a party to a scheme or arrangement is to be taken to have been under the control of the claimant company at all the following times—

- (a) any time when the claimant company would have been taken (in accordance with sections 450 and 451 of CTA 2010) to have had control of the person for the purposes of Part 10 of CTA 2010 (close companies),
 - (b) any time when the claimant company would have been so taken if sections 450 and 451 of CTA 2010 applied (with the necessary modifications) in the case of partnerships and unincorporated associations as they apply in the case of companies, and
 - (c) any time when the person acted in relation to the scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of the claimant company.
- (8) For the purposes of subsection (5), the claimant company is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in the claimant company.
- (9) In this section “arrangement” means an arrangement of any kind, whether in writing or not.

69 Dividends paid out of transferred profits

- (1) This section applies if—
- (a) a company resident outside the United Kingdom (“company A”) has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits,
 - (b) some or all of those profits become profits of another company resident outside the United Kingdom (“company B”) otherwise than as a result of the payment of a dividend to company B, and
 - (c) company B pays a dividend out of those profits to another company, wherever resident.
- (2) If this section applies, this Part has effect, so far as relating to the determination of underlying tax in relation to any dividend paid—
- (a) by any company resident outside the United Kingdom (whether or not company B),
 - (b) to a company resident in the United Kingdom,
- as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1) (b).
- (3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom is not to exceed the amount which would have been allowable to that company had those profits become profits of company B as a result of the payment of a dividend by company A to company B.

70 Underlying tax reflecting interest on loans

- (1) Subsection (2) applies if—
- (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,
 - (b) there is a dividend-paying chain (see section 64) in which—
 - (i) the first company is the claimant, and

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- (ii) the second company is a company resident outside the United Kingdom,
 - (c) the claimant—
 - (i) controls directly or indirectly, or
 - (ii) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in the second company,
 - (d) the claim relates to underlying tax on a dividend paid by the second company,
 - (e) that underlying tax is, or includes, tax payable under the law of a territory outside the United Kingdom on, or by reference to, interest or dividends earned or received in the course of its business by a company (“the receiving company”) which is—
 - (i) the second company, or
 - (ii) a company lower in the chain than the second company, and
 - (f) section 44 would have applied to the receiving company had it been resident in the United Kingdom.
- (2) The amount of the credit for the tax mentioned in subsection (1)(e) (“the non-UK tax”) is not to exceed the sum equal to corporation tax, at the rate in force at the time the non-UK tax was chargeable, on—
- ID – E**
- where—
- ID is the amount of the interest or dividends mentioned in subsection (1)(e), and
 - E is the amount of the receiving company’s expenditure which is properly attributable to the earning of that interest or those dividends.
- (3) For the purposes of subsection (1)(a)—
- (a) “bank” means a company carrying on, in the United Kingdom or elsewhere, any trade which includes the receipt of interest or dividends, and
 - (b) whether a company is connected with a bank is determined in accordance with section 1122 of CTA 2010.
- (4) For the purposes of subsection (1)(c), the claimant is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in the claimant.

71 Foreign taxation of group as single entity

- (1) Subsections (2) and (3) apply in relation to a claim for credit in respect of underlying tax in relation to a dividend paid by a company resident outside the United Kingdom to a company resident in the United Kingdom if, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in the territory (“the responsible company”) in respect of the aggregate profits, or aggregate profits and aggregate gains, of—
- (a) that company and another company resident in the territory, or
 - (b) that company and two or more other companies resident in the territory,
- taken together as a single taxable entity.

- (2) This Part, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1)(a) or (b) (the “non-resident companies”) to another company (“the payee company”), has effect as if—
- (a) the non-resident companies, taken together, were a single company,
 - (b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and
 - (c) that single company were related to the payee company if the company which actually pays the dividend is related to the payee company.
- (3) In particular, this Part has effect as if—
- (a) the relevant profits for the purposes of section 58 is a single aggregate figure in respect of that single company, and
 - (b) the tax paid in the territory by the responsible company is tax paid in the territory by that single company.
- (4) For the purposes of this section, a company (“X”) is related to another company (“H”) if H—
- (a) controls directly or indirectly, or
 - (b) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in X.
- (5) For the purposes of subsection (4), H is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in H.