



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVII

TAX AVOIDANCE

CHAPTER I

CANCELLATION OF [F¹CORPORATION TAX] ADVANTAGES FROM CERTAIN TRANSACTIONS IN SECURITIES

Textual Amendments

- F1** Words in Pt. 17 Ch. 1 heading substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 153](#) (with [Sch. 2](#))

703 Cancellation of [F²corporation tax] advantage.

- (1) ^{M1}Where—
- (a) in any such circumstances as are mentioned in section 704, and
 - (b) in consequence of a transaction in securities or of the combined effect of two or more such transactions,
- a [F³company] is in a position to obtain, or has obtained, a [F⁴corporation tax] advantage, then unless [F⁵it] shows that the transaction or transactions were carried out either for bona fide commercial reasons or in the ordinary course of making or managing investments, and that none of them had as their main object, or one of their main objects, to enable [F⁴corporation tax] advantages to be obtained, this section shall apply to [F⁶it] in respect of that transaction or those transactions.
- (2) For the purposes of this Chapter a [F⁷corporation tax] advantage obtained or obtainable by a [F⁸company] shall be deemed to be obtained or obtainable by [F⁹it] in consequence of a transaction in securities or of the combined effect of two or more such transactions,

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if it is obtained or obtainable in consequence of the combined effect of the transaction or transactions and the liquidation of a company.

- (3) Where this section applies to a [^{F10}company] in respect of any transaction or transactions, the [^{F11}corporation tax advantage] obtained or obtainable by [^{F12}it] in consequence thereof shall be counteracted by such of the following adjustments, that is to say an assessment, the nullifying of a right to repayment or the requiring of the return of a repayment already made (the amount to be returned being chargeable ^{F13} . . . under Case VI of Schedule D and recoverable accordingly), or the computation or recomputation of profits or gains, or [^{F14}liability to corporation tax], on such basis as the Board may specify by notice served on [^{F12}it] as being requisite for counteracting the [^{F11}corporation tax advantage] so obtained or obtainable.

[^{F15}(3A) ^{F16}]

- (4) ^{F17}
- (5) ^{F17}
- (6) ^{F17}

- (7) ^{M2}*In the case of a man and his wife living with him (whether or not she is separately assessed to tax), this Chapter shall, subject to subsection (8) below, be treated as applying to him in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the wife were his property, rights or liabilities in relation to which she had acted only as nominee for him, and shall be treated as applying to the wife in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the man were her property, rights or liabilities in relation to which he had acted only as nominee for her^{F18}.*

- (8) *No adjustment made under subsection (3) above by reference to any transaction or transactions to counteract any tax advantage shall by virtue of subsection (7) above be so made that a person bears more tax than if the transaction or transactions had not had as a consequence that any relief or increased relief from, or repayment or increased repayment of, income tax, or any deduction in computing profits or gains, was obtained or obtainable, or that the way in which receipts accrued was such that the recipient did not pay or bear tax on them*^{F19}.

- (9) The Board shall not give a notice under subsection (3) above until they have notified the [^{F20}company] in question that they have reason to believe that this section may apply to [^{F21}it] in respect of a transaction or transactions specified in the notification; and if within 30 days of the issue of the notification that [^{F20}company], being of opinion that this section does not so apply to [^{F21}it], makes a statutory declaration to that effect stating the facts and circumstances upon which [^{F22}its] opinion is based, and sends it to the Board, then subject to subsection (10) below, this section shall not apply to [^{F21}it] in respect of the transaction or transactions.

- (10) If, when a statutory declaration has been sent to the Board under subsection (9) above, they see reason to take further action in the matter—
 - (a) the Board shall send to the tribunal a certificate to that effect, together with the statutory declaration, and may also send therewith a counter-statement with reference to the matter;
 - (b) the tribunal shall take into consideration the declaration and the certificate, and the counter-statement, if any, and shall determine whether there is or is not a prima facie case for proceeding in the matter, and if they determine that there

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is no such case this section shall not apply to the [F²³company] in question in respect of the transaction or transactions;

but any such determination shall not affect the operation of this section in respect of transactions which include that transaction or some or all of those transactions and also include another transaction or other transactions.

(11) F²⁴

(12) This section applies whether the [F²⁵corporation tax advantage] in question relates to a chargeable period ending before or after the commencement of this Act, but nothing in this section shall authorise the making of an assessment later than six years after the [F²⁶accounting period] to which the [F²⁵corporation tax advantage] relates; and no other provision contained in the [F²⁷Corporation Tax Acts] shall be construed as limiting the powers conferred by this section.

Textual Amendments

- F2** Words in s. 703 sidenote substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(10\)](#) (with [Sch. 2](#))
- F3** Word in s. 703(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(2\)\(a\)](#) (with [Sch. 2](#))
- F4** Words in s. 703(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(2\)\(b\)](#) (with [Sch. 2](#))
- F5** Word in s. 703(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(2\)\(c\)](#) (with [Sch. 2](#))
- F6** Word in s. 703(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(2\)\(d\)](#) (with [Sch. 2](#))
- F7** Words in s. 703(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(3\)\(a\)](#) (with [Sch. 2](#))
- F8** Word in s. 703(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(3\)\(b\)](#) (with [Sch. 2](#))
- F9** Word in s. 703(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(3\)\(c\)](#) (with [Sch. 2](#))
- F10** Word in s. 703(3) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(4\)\(b\)](#) (with [Sch. 2](#))
- F11** Words in s. 703(3) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(4\)\(a\)](#) (with [Sch. 2](#))
- F12** Words in s. 703(3) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(4\)\(c\)](#) (with [Sch. 2](#))
- F13** Words in s. 703(3) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(4\)\(d\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F14** Words in s. 703(3) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(4\)\(e\)](#) (with [Sch. 2](#))
- F15** S. 703(3A) inserted (with effect in accordance with [Sch. 3 para. 32\(4\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 3 para. 32\(2\)](#)
- F16** S. 703(3A) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(5\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F17** S. 703(4)-(6) repealed (with effect in accordance with [Sch. 3 para. 32\(5\)](#) of the repealing Act) by [Finance Act 1998 \(c. 36\), Sch. 3 para. 32\(3\), Sch. 27 Pt. 3\(2\)](#), Note
- F18** Repealed by 1988(F) s.148 and [Sch. 14 Part VIII](#) for 1990-91 and subsequent years.
- F19** Repealed by 1988(F) s.148 and [Sch. 14 Part VIII](#) for 1990-91 and subsequent years.
- F20** Words in s. 703(9) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 154\(6\)\(a\)](#) (with [Sch. 2](#))

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- F21** Words in s. 703(9) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 154(6)(b)** (with Sch. 2)
- F22** Word in s. 703(9) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 154(6)(c)** (with Sch. 2)
- F23** Word in s. 703(10) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 154(7)** (with Sch. 2)
- F24** S. 703(11) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 154(8), Sch. 3 Pt. 1** (with Sch. 2)
- F25** Words in s. 703(12) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 154(9)(a)** (with Sch. 2)
- F26** Words in s. 703(12) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 154(9)(b)** (with Sch. 2)
- F27** Words in s. 703(12) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 154(9)(c)** (with Sch. 2)

Marginal Citations

- M1** Source—1970 s.460(1)-(3)
- M2** Source—1970 s.460(5)-(9)

704 The prescribed circumstances.

^{M3}The circumstances mentioned in section 703(1) are [^{F28}as follows (and in this section references to “the section 703(1) company” are references to the company referred to in that section)]

- (A) That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being a sale or purchase followed by the purchase or sale of the same or other securities, the [^{F29}section 703(1) company] receives an abnormal amount by way of dividend, and the amount so received is taken into account for any of the following purposes—
 - (a) any exemption from [^{F30}corporation tax], or
 - (b) the setting-off of losses against profits or income, or
 - (c) the giving of group relief, or
 - (d) ^{F31}.....
 - (e) ^{F32}.....
 - (f) ^{F33}.....
 - (g) ^{F33}.....

OR

- (B) ^{F34}.....
^{F34}...
- (C) (1) That the [^{F35}section 703(1) company] receives, in consequence of a transaction whereby any other person—
 - (a) subsequently receives, or has received, an abnormal amount by way of dividend; ^{F36}...
 - (b) ^{F36}.....
 a consideration which either—

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- (i) is, or represents the value of, assets which are (or apart from anything done by the company in question would have been) available for distribution by way of dividend, or
 - (ii) is received in respect of future receipts of the company, or
 - (iii) is, or represents the value of, trading stock of the company,
- and the [F35section 703(1) company] so receives the consideration that [F37it] does not pay or bear tax on it as income.
- (2) The assets mentioned in sub-paragraph (1) above do not include assets which (while of a description which under the law of the country in which the company is incorporated is available for distribution by way of dividend) are shown to represent a return of sums paid by subscribers on the issue of securities.

OR

- (D) (1) That in connection with the distribution of profits of a company to which this paragraph applies, the [F38section 703(1) company] so receives as is mentioned in paragraph C(1) above such a consideration as is therein mentioned.
- (2) The companies to which this paragraph applies are—
- (a) any company under the control of not more than five persons, and
 - (b) any other company which does not satisfy the condition that its shares or stocks or some class thereof (disregarding debenture stock, preferred shares or preferred stock), [F39are [F40included in the official UK list, and are dealt in on a recognised stock exchange in the United Kingdom] regularly or from time to time],
- so, however, that this paragraph does not apply to a company under the control of one or more companies to which this paragraph does not apply.
- (3) Subsections (2) to (6) of section 416 shall apply for the purposes of this paragraph.

OR

- (E) (1) That in connection with the transfer directly or indirectly of assets of a company to which paragraph D above applies to another such company, or in connection with any transaction in securities in which two or more companies to which paragraph D above applies are concerned, the [F41section 703(1) company] receives non-taxable consideration which is or represents the value of assets available for distribution by such a company, and which consists of any share capital or any security (as defined by section 254(1)) issued by such a company.
- (2) So far as sub-paragraph (1) above relates to share capital other than redeemable share capital, it shall not apply unless and except to the extent that the share capital is repaid (in a winding-up or otherwise), and, where section 703 applies to a [F42company] by virtue of sub-paragraph (1) above on the repayment of any share capital, any assessment to [F43corporation tax] under subsection (3) of that section shall be an assessment to [F43corporation tax] for [F44the accounting period] in which the share capital is repaid.
- (3) In this paragraph—
- “assets available for distribution” means assets which are, or apart from anything done by the company in question would have been, available for distribution by way of dividend, or trading stock of the company;

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“non-taxable”, in relation to a [F45section 703(1) company] receiving consideration, means that the recipient does not pay or bear [F46corporation tax] on it as income (apart from the provisions of this Chapter);

“share” includes stock and any other interest of a member in a company; and the references in sub-paragraph (2) above to the repayment of share capital include references to any distribution made in respect of any shares in a winding-up or dissolution of the company.

Textual Amendments

- F28** Words in s. 704 inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(2\)](#) (with Sch. 2)
- F29** Words in s. 704 para. A substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(3\)\(a\)](#) (with Sch. 2)
- F30** Words in s. 704 para. A(a) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(3\)\(b\)](#) (with Sch. 2)
- F31** S. 704 para. A(d) repealed (with effect in accordance with Sch. 3 para. 33(3) of the repealing Act) by [Finance Act 1998 \(c. 36\), Sch. 3 para. 33\(2\), Sch. 27 Pt. 3\(2\)](#), Note
- F32** S. 704 para. A(e) repealed (with effect in accordance with s. 20 of the repealing Act) by [Finance \(No. 2\) Act 1997 \(c. 58\), Sch. 8 Pt. 2\(4\)](#), Note
- F33** S. 704 para. A(f)(g) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by virtue of [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(3\)\(c\), Sch. 3 Pt. 1](#) (with Sch. 2)
- F34** S. 704 para. B and word omitted (with effect in accordance with s. 66(5) of the repealing Act) by virtue of [Finance Act 2008 \(c. 9\), s. 66\(1\)\(a\)\(i\)](#)
- F35** Words in s. 704 para. C(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(6\)\(a\)](#) (with Sch. 2)
- F36** S. 704 para. C(1)(b) and preceding word omitted (with effect in accordance with s. 66(5) of the repealing Act) by virtue of [Finance Act 2008 \(c. 9\), s. 66\(1\)\(a\)\(ii\)](#)
- F37** Word in s. 704 para. C(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(6\)\(c\)](#) (with Sch. 2)
- F38** Words in s. 704 para. D(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(7\)](#) (with Sch. 2)
- F39** Words in s.704 para. D(2)(b) substituted (with effect in accordance with s.175(4) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 175\(1\)-\(3\)](#)
- F40** Words in s. 704 para. D(2)(b) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\), Sch. 26 para. 7\(7\)](#)
- F41** Words in s. 704 para. E(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(8\)\(a\)](#) (with Sch. 2)
- F42** Word in s. 704 para. E(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(8\)\(b\)\(i\)](#) (with Sch. 2)
- F43** Words in s. 704 para. E(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(8\)\(b\)\(ii\)](#) (with Sch. 2)
- F44** Words in s. 704 para. E(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(8\)\(b\)\(iii\)](#) (with Sch. 2)
- F45** Words in s. 704 para. E(3) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(8\)\(c\)\(i\)](#) (with Sch. 2)
- F46** Words in s. 704 para. E(3) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 155\(8\)\(c\)\(ii\)](#) (with Sch. 2)

Modifications etc. (not altering text)

- C1** S. 704 modified (9.3.1999) by [The Corporation Tax \(Treatment of Unrelieved Surplus Advance Corporation Tax\) Regulations 1999 \(S.I. 1999/358\)](#), [regs. 1, 23](#)

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M3 Source—1970 s.461; 1973 s.54, Sch.11 2(a), (b)

705 Appeals against Board’s notices under section 703.

- (1) ^{F47}Any [company to which] notice has been given under section 703(3) may within 30 days by notice to the Board appeal to the Special Commissioners on the grounds that section 703 does not apply to [^{F48}it] in respect of the transaction or transactions in question, or that the adjustments directed to be made are inappropriate.
- (2) If [^{F49}the company] or the Board are dissatisfied with the determination of the Special Commissioners [^{F50}the company or the Board] may, on giving notice to the clerk to the Special Commissioners within 30 days after the determination, require the appeal to be re-heard by the tribunal, and the Special Commissioners shall transmit to the tribunal any document in their possession which was delivered to them for the purposes of the appeal.
- (3) Where notice is given under subsection (2) above, the tribunal shall re-hear and determine the appeal and shall have and exercise the same powers and authorities in relation to the appeal as the Special Commissioners might have and exercise, and the determination of the tribunal thereon shall be final and conclusive.
- (4) ^{F51}
- (5) On an appeal under subsections (1) to (3) above the Special Commissioners or the tribunal shall have power to cancel or vary a notice under subsection (3) of section 703 or to vary or quash an assessment made in accordance with such a notice, but the bringing of an appeal or the statement of a case shall not affect the validity of a notice given or of any other thing done in pursuance of that subsection pending the determination of the proceedings.
- (6) ^{F52}
- (7) ^{F52}
- (8) ^{F52}

Textual Amendments

- F47** Words in s. 705(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 156\(2\)\(a\)](#) (with [Sch. 2](#))
- F48** Word in s. 705(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 156\(2\)\(b\)](#) (with [Sch. 2](#))
- F49** Words in s. 705(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 156\(3\)\(a\)](#) (with [Sch. 2](#))
- F50** Words in s. 705(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 156\(3\)\(b\)](#) (with [Sch. 2](#))
- F51** S. 705(4) repealed (1.1.1994) by [The General and Special Commissioners \(Amendment of Enactments\) Regulations 1994 \(S.I. 1994/1813\)](#), reg. 1(1), [Sch. 1 para. 23](#), [Sch. 2 Pt. 1](#)
- F52** S. 705(6)-(8) repealed (with effect in accordance with [Sch. 3 para. 34\(3\)](#) of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 3 para. 34\(2\)](#), [Sch. 27 Pt. 3\(2\)](#), Note

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M4 Source—1970 s.462

[^{F53}705A] Statement of case by tribunal for opinion of High Court.

- (1) Immediately after the determination by the tribunal of an appeal re-heard by them under section 705 of this Act, the appellant or the Board, if dissatisfied with the determination as being erroneous in point of law, may declare [^{F54}its] or their dissatisfaction to the tribunal.
- (2) The appellant or the Board, as the case may be, having declared [^{F54}its] or their dissatisfaction, may, within thirty days after the determination, by notice in writing require the tribunal to state and sign a case for the opinion of the High Court.
- (3) The party requiring the case shall pay to the tribunal a fee of £25 for and in respect of the same, before [^{F55}that party] is entitled to have the case stated.
- (4) The case shall set forth the facts and the determination of the tribunal, and the party requiring it shall transmit the case, when stated and signed, to the High Court, within thirty days after receiving the same.
- (5) At or before the time when [^{F56}that party] transmits the case to the High Court, [^{F56}that party] shall send notice in writing of the fact that the case has been stated on [^{F57}that party's] application, together with a copy of the case, to the other party.
- (6) The High Court shall hear and determine any question of law arising on the case, and may reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the tribunal with the Court's opinion on it, or make such other order in relation to the matter as the Court thinks fit.
- (7) The High Court may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.
- (8) Subject to subsection (9) below and to Part II of the Administration of Justice Act 1969 (appeal from High Court to House of Lords), an appeal shall, in England and Wales, lie from the decision of the High Court to the Court of Appeal and thence to the House of Lords.
- (9) No appeal shall lie to the House of Lords from the Court of Appeal unless leave has been given under and in accordance with section 1 of the Administration of Justice (Appeals) Act 1934.
- (10) Subject to subsection (11) below, where the determination of the tribunal is in respect of an assessment made in accordance with a notice under subsection (3) of section 703, then notwithstanding that a case has been required to be stated or is pending before the High Court in respect of the determination, [^{F58}corporation tax] shall be paid in accordance with the determination.
- (11) If the amount charged by the assessment is altered by the order or judgment of the High Court, then—
 - (a) if too much [^{F58}corporation tax] has been paid the amount overpaid shall be refunded with such interest, if any, as the High Court may allow; or
 - (b) if too little [^{F58}corporation tax] has been charged, the amount undercharged shall be due and payable at the expiration of a period of thirty days beginning

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with the date on which the Board issue to the other party a notice of the total amount payable in accordance with the order or judgment of that Court.

- (12) All matters within the jurisdiction of the High Court under this section shall be assigned in Scotland to the Court of Session sitting as the Court of Exchequer (references in this section to the High Court being construed accordingly); and an appeal shall lie from the decision under this section of the Court of Session, as the Court of Exchequer in Scotland, to the House of Lords.]

Textual Amendments

- F53** Ss. 705A, 705B inserted (1.1.1994) by The General and Special Commissioners (Amendment of Enactments) Regulations 1994 (S.I. 1994/1813), reg. 1(1), **Sch. 1 para. 24**
- F54** Words in s. 705A(1)(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 157(2)** (with Sch. 2)
- F55** Words in s. 705A(3) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 157(3)** (with Sch. 2)
- F56** Words in s. 705A(5) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 157(4)(a)** (with Sch. 2)
- F57** Words in s. 705A(5) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 157(4)(b)** (with Sch. 2)
- F58** Words in s. 705A(10)(11)(a)(b) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 157(5)** (with Sch. 2)

[^{F53}705B Proceedings in Northern Ireland.

- (1) A case which is stated by the tribunal under section 705A in proceedings in Northern Ireland shall be a case for the opinion of the Court of Appeal in Northern Ireland, and [^{F59}the Management Act and the Corporation Tax Acts shall have effect] as if that section applied in relation to such proceedings—
- (a) with the substitution for references to the High Court of references to the Court of Appeal in Northern Ireland;
 - (b) with the omission of subsections (4), (5), (8) and (9) of that section.
- (2) The procedure relating to the transmission of the case to, and the hearing and determination of the case by, the Court of Appeal in Northern Ireland shall be that for the time being in force in Northern Ireland as respects cases stated by a county court in exercise of its general jurisdiction, and an appeal shall lie from the Court of Appeal to the House of Lords in accordance with section 42 of the Judicature (Northern Ireland) Act 1978.
- (3) Where in proceedings in Northern Ireland an application is made for a case to be stated by the tribunal under this section, the case must be settled and sent to the applicant as soon after the application as is reasonably practicable.
- (4) For the purposes of this section “proceedings in Northern Ireland” means proceedings as respects which the place given by the rules in Schedule 3 to the Management Act is in Northern Ireland.]

Textual Amendments

- F53** Ss. 705A, 705B inserted (1.1.1994) by The General and Special Commissioners (Amendment of Enactments) Regulations 1994 (S.I. 1994/1813), reg. 1(1), **Sch. 1 para. 24**

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F59 Words in s. 705B(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 158](#) (with Sch. 2)

706 The tribunal.

[^{F60}(1)] ^{M5}For the purposes of this Chapter the tribunal shall consist of—

- (a) a chairman, appointed by the Lord Chancellor, and
- (b) two or more persons appointed by the Lord Chancellor as having special knowledge of and experience in financial or commercial matters.

[^{F61}(2)] A person appointed as chairman or other member of the tribunal shall vacate his office on the day on which he attains the age of 70; but this subsection is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75).]

Textual Amendments

F60 S. 706 renumbered as s. 706(1) (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), ss. 26, 31(2), [Sch. 6 para.44](#) (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, [art. 2](#)

F61 S. 706(2) added (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), ss. 26, 31(2), [Sch. 6 para.44](#) (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, [art. 2](#)

Modifications etc. (not altering text)

C2 See—1970(M) s.6(1)—*declaration to be made by member of tribunal on appointment.* 1989 s.182—*disclosure of information (in Part II Vol.5).*

Marginal Citations

M5 Source—1970 s.463; 1982 Sch.21 3(1)

707 Procedure for clearance in advance.

^{M6}(1) The following provisions shall have effect where in pursuance of this section a [^{F62}company] furnishes to the Board particulars of a transaction or transactions effected or to be effected by [^{F63}it], that is to say—

- (a) if the Board are of opinion that the particulars, or any further information furnished in pursuance of this paragraph, are not sufficient for the purposes of this section, they shall within 30 days of the receipt thereof notify to that [^{F62}company] what further information they require for those purposes, and unless that further information is furnished to the Board within 30 days from the notification, or such further time as the Board may allow, they shall not be required to proceed further under this section;
- (b) subject to paragraph (a) above, the Board shall within 30 days of the receipt of the particulars, or, where that paragraph has effect, of all further information required, notify that [^{F62}company] whether or not they are satisfied that the transaction or transactions as described in the particulars were or will be such that no notice under section 703(3) ought to be given in respect of it or them;

and, subject to the following provisions of this section, if the Board notify [^{F63}it] that they are so satisfied, section 703 shall not apply to [^{F63}it] in respect of that transaction or those transactions.

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- (2) If the particulars, and any further information given under this section with respect to any transaction or transactions, are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the Board, any notification given by the Board under this section shall be void.
- (3) In no event shall the giving of a notification under this section with respect to any transaction or transactions prevent section 703 applying to a [F64 company] in respect of transactions which include that transaction or all or some of those transactions and also include another transaction or other transactions.

Textual Amendments

- F62** Words in s. 707(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 159\(2\)\(a\)](#) (with [Sch. 2](#))
- F63** Words in s. 707(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 159\(2\)\(b\)](#) (with [Sch. 2](#))
- F64** Word in s. 707(3) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 159\(3\)](#) (with [Sch. 2](#))

Marginal Citations

- M6** Source—1970 s.464

708 Power to obtain information.

^{M7}Where it appears to the Board that by reason of any transaction or transactions a [F65 company] may be a [F65 company] to [F66 which] section 703 applies, the Board may by notice served on [F67 it] require [F67 it], within such time not less than 28 days as may be specified in the notice, to furnish information in [F68 its] possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether a notice under section 703(3) should be given in respect of [F67 it].

Textual Amendments

- F65** Words in s. 708 substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 160\(a\)](#) (with [Sch. 2](#))
- F66** Word in s. 708 substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 160\(b\)](#) (with [Sch. 2](#))
- F67** Words in s. 708 substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 160\(c\)](#) (with [Sch. 2](#))
- F68** Word in s. 708 substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 160\(d\)](#) (with [Sch. 2](#))

Marginal Citations

- M7** Source—1970 s.465

709 Meaning of [F69 “corporation tax advantage”] and other expressions.

- (1) ^{M8}In this Chapter “[F70 corporation tax] advantage” means a relief or increased relief from, or repayment or increased repayment of, [F70 corporation tax], or the avoidance

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or reduction of a charge to [^{F70}corporation tax] or an assessment to [^{F70}corporation tax] or the avoidance of a possible assessment thereto, whether the avoidance or reduction is effected by receipts accruing in such a way that the recipient does not pay or bear [^{F70}corporation tax] on them, or by a deduction in computing profits or gains.

(2) ^{M9}In this Chapter—

“company” includes any body corporate,

“securities”—

(a) includes shares and stock, and

(b) in relation to a company not limited by shares (whether or not it has a share capital) includes also a reference to the interest of a member of the company as such, whatever the form of that interest;

“trading stock” has the same meaning as in section 100(1);

“transaction in securities” includes transactions, of whatever description, relating to securities, and in particular—

(i) the purchase, sale or exchange of securities;

(ii) the issuing or securing the issue of, or applying or subscribing for, new securities;

(iii) the altering, or securing the alteration of, the rights attached to securities;

and references to dividends include references to other qualifying distributions and to interest.

[^{F71}(2A) ^{F72}.....]

(3) In section 704—

(a) references to profits include references to income, reserves or other assets;

(b) references to distribution include references to transfer or realisation (including application in discharge of liabilities); and

(c) references to the receipt of consideration include references to the receipt of any money or money’s worth.

(4) For the purposes of section 704 an amount received by way of dividend shall be treated as abnormal if the Board, the Special Commissioners or the tribunal, as the case may be, are satisfied—

(a) in the case of a dividend at a fixed rate, that it substantially exceeds the amount which the recipient would have received if the dividend had accrued from day to day and [^{F73}the recipient] had been entitled only to so much of the dividend as accrued while [^{F73}the recipient] held the securities, so however that an amount shall not be treated as abnormal by virtue only of this paragraph if during the six months beginning with the purchase of the securities the recipient does not sell or otherwise dispose of, or acquire an option to sell, any of those securities or any securities similar to those securities; or

(b) in any case, that it substantially exceeds a normal return on the consideration provided by the recipient for the relevant securities, that is to say, the securities in respect of which the dividend was received and, if those securities are derived from securities previously acquired by the recipient, the securities which were previously acquired.

(5) For the purposes of subsection (4)(a) above securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding

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any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred, and for those purposes rights guaranteed by the Treasury shall be treated as rights against the Treasury.

(6) For the purposes of subsection (4)(b) above—

- (a) if the consideration provided by the recipient for any of the relevant securities was in excess of their market value at the time [^{F74}the recipient] acquired them, or if no consideration was provided by [^{F75}the recipient] for any of the relevant securities, the recipient shall be taken to have provided for those securities consideration equal to their market value at the time [^{F74}the recipient] acquired them; and
- (b) in determining whether an amount received by way of dividend exceeds a normal return, regard shall be had to the length of time previous to the receipt of that amount that the recipient first acquired any of the relevant securities and to any dividends and other distributions made in respect of them during that time.

Textual Amendments

- F69** Words in s. 709 sidenote substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 161\(5\)](#) (with [Sch. 2](#))
- F70** Words in s. 709(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 161\(2\)](#) (with [Sch. 2](#))
- F71** [S. 709\(2A\)](#) inserted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [s. 73\(1\)](#)
- F72** [S. 709\(2A\)](#) omitted (with effect in accordance with s. 66(5) of the repealing Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [s. 66\(1\)\(b\)](#)
- F73** Words in s. 709(4)(a) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 161\(3\)](#) (with [Sch. 2](#))
- F74** Words in s. 709(6)(a) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 161\(4\)\(a\)](#) (with [Sch. 2](#))
- F75** Words in s. 709(6)(a) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 161\(4\)\(b\)](#) (with [Sch. 2](#))

Modifications etc. (not altering text)

- C3** *Definition applied for purposes of 1990 Sch.10—convertible securities.*

Marginal Citations

- M8** Source—1970 s.466(1); 1973 Sch.11 4
- M9** Source—1970 s.467; 1973 Sch.11 5

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CHAPTER II

TRANSFERS OF SECURITIES

Transfers with or without accrued interest: introductory

710 Meaning of “securities”, “transfer” etc. for purposes of sections 711 to 728.

F76

Textual Amendments

F76 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

711 Meaning of “interest”, “transfers with or without accrued interest” etc.

F77

Textual Amendments

F77 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

712 Meaning of “settlement day” for purposes of sections 711 to 728.

F78

Textual Amendments

F78 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

Transfers with or without accrued interest: charge to tax and reliefs

713 Deemed sums and reliefs.

F79

Textual Amendments

F79 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

714 Treatment of deemed sums and reliefs.

F80

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Textual Amendments

F80 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

715 Exceptions from sections 713 and 714

F81

Textual Amendments

F81 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

716 Transfer of unrealised interest.

F82

Textual Amendments

F82 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

717 Variable interest rate.

F83

Textual Amendments

F83 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

718 Interest in default.

F84

Textual Amendments

F84 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

719 Unrealised interest in default

F85

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Textual Amendments

- F85** Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

Transfers with or without accrued interest: supplemental

720 Nominees, trustees etc.

F86

Textual Amendments

- F86** Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

721 Death.

F87

Textual Amendments

- F87** Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

722 Trading stock.

F88

Textual Amendments

- F88** Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

[^{F89}722A Gilt strips: deemed transfer.

F90]

Textual Amendments

- F89** S. 722A inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 6**
F90 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

723 Foreign securities: delayed remittances

F91

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Textual Amendments

F91 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with [Sch. 2](#))

724 Insurance companies.

F92

Textual Amendments

F92 S. 724 repealed (with effect in accordance with s. 105(1) of the repealing Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 41 Pt. 5(3)**, Note

F93 **725**

Textual Amendments

F93 S. 725 repealed (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by [1993 c. 34](#), s. 213, **Sch. 23 Pt. III(12)** Note 5

F94 **726**

Textual Amendments

F94 S. 726 repealed (for the year 1991-92 and subsequent years of assessment) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 123, **Sch. 19 Pt. V**, Note 6

[^{F95}726A New issues of securities.

F96]

Textual Amendments

F95 S. 726A inserted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 54, **Sch. 12 paras. 2, 5**
F96 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with [Sch. 2](#))

727 Stock lending.

F97

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Textual Amendments
F97 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 162, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

[^{F98}727A Exception for sale and repurchase of securities.

^{F99}

Textual Amendments
F98 S. 727A inserted (with effect in accordance with s. 79(3) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 79\(1\)](#) (with s. 79(4))
F99 Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 162, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

728 Information.

^{M10}(1) In order to obtain for the purposes of [^{F100}Part 12 of ITA 2007 (accrued income profits)] particulars relating to securities, an inspector may by notice require a return under subsection (2) or (3) below.

(2) A member of the Stock Exchange, other than a market maker, may be required to make a return giving, in relation to any transactions effected by him in the course of his business in the period specified in the notice, such particulars as may be so specified.

^{F101}

(3) A person (other than a member of the Stock Exchange), who acts as an agent or broker in the United Kingdom in transactions in securities, may be required to make a return giving, in relation to any such transactions effected by him in the period specified in the notice, such particulars as may be so specified.

(4) No person shall be required under subsection (2) or (3) above to include in a return particulars of any transaction effected more than three years before the service of the notice requiring him to make the return.

(5) In order to obtain for the purposes of [^{F102}Part 12 of ITA 2007 (accrued income profits)] particulars relating to securities, the Board or an inspector may by notice require any person in whose name any securities are registered to state whether or not he is the beneficial owner of those securities and, if he is not the beneficial owner of them or any of them, to furnish the name and address of the person or persons on whose behalf the securities are registered in his name.

(6) In this section “market maker”, in relation to securities, means a person who—
 (a) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of the kind concerned at a price specified by him; and
 (b) is recognised as doing so by the Council of the Stock Exchange.

(7) The Board may by regulations provide that—

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- (a) subsections (2), (3) and (6)(a) above shall have effect as if references to the Stock Exchange were to any recognised investment exchange (within the meaning of the [F103Financial Services and Markets Act 2000]) or to any of those exchanges specified in the regulations; and
 - (b) subsection (6)(b) shall have effect as if the reference to the Council of the Stock Exchange were to the investment exchange concerned.
- (8) Regulations under subsection (7) above shall apply in relation to transactions effected on or after such day as may be specified in the regulations.

[F104(9) In this section “securities” has the meaning given by section 619 of ITA 2007.]

Textual Amendments

- F100** Words in s. 728(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 163\(2\)](#) (with [Sch. 2](#))
- F101** Words in s. 728(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 163\(3\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F102** Words in s. 728(5) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 163\(4\)](#) (with [Sch. 2](#))
- F103** Words in s. 728(7)(a) substituted (1.12.2001) by [Financial Services and Markets Act 2000 \(c. 8\)](#) s. 431(2), [Sch. 20 para. 4\(5\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- F104** [S. 728\(9\)](#) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 163\(5\)](#) (with [Sch. 2](#))

Modifications etc. (not altering text)

- C4** [Ss. 710-728](#) modified (27.7.1993) by [1993 c. 34](#), [s. 63\(1\)\(2\)](#)
[Ss. 710-728](#) modified (27.7.1993) by [1993 c. 34](#), [s. 63\(3\)\(4\)](#)
[Ss. 710-728](#) modified (27.7.1993) by [1993 c. 34](#), [s. 63\(8\)\(10\)](#)
[Ss. 710-728](#) modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by [1993 c. 34](#), [ss. 176\(4\)](#), [184\(3\)](#)
- C5** [Ss. 710-728](#) modified (with effect in accordance with s. 105(1) of the modifying Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 13 para. 11](#) (with [Sch. 13 para. 16](#), [Sch. 15](#))
- C6** [Ss. 711-728](#) modified (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [s. 161\(2\)\(a\)](#) (with [s. 161\(7\)](#))

Marginal Citations

- M10** Source—1985 [Sch.23 44\(1\)-\(5A\)](#); 1986 [Sch.17 6](#)

Other transfers of securities

729 Sale and repurchase of securities.

F105

Textual Amendments

- F105** [S. 729](#) repealed (with effect in accordance with s. 159(1)(10) of the repealing Act) by [Finance Act 1996 \(c. 8\)](#), [s. 159\(1\)](#), [Sch. 41 Pt. 5\(21\)](#), Note; [S.I. 1996/2646](#), [art. 2](#)

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730 [F106] **Transfers of rights to receive distributions in respect of shares**

^{M11}(1) Where in any chargeable period the owner of any [F107] shares] (“the owner”) sells or transfers the right to receive any [F108] distribution] payable (whether before or after the sale or transfer) in respect of the [F107] shares] without selling or transferring the [F107] shares], then, for all the purposes of the Tax Acts, that [F108] distribution], whether it would or would not be chargeable to tax apart from the provisions of this section—

- (a) shall be [F109] treated as] the income of the owner or, in a case where the owner is not the beneficial owner of the [F107] shares] and some other person (“a beneficiary”) is beneficially entitled to the income arising from the [F107] shares], the income of the beneficiary, and
- (b) shall be [F110] treated as] the income of the owner or beneficiary for that chargeable period, ^{F111} . . .
- (c) ^{F111}

[F112] (2) This section does not have effect in relation to a sale or transfer if the proceeds of the sale or transfer are chargeable to tax.]

[F113] (2A) ^{F114}]

[F115] (3) ^{F116}]

(4) Where—

- (a) the [F107] shares] are of such a character that the [F108] distribution] payable in respect thereof may be paid without deduction of income tax, and
- (b) the owner or beneficiary does not show that the proceeds of any sale or other realisation of the right to receive the [F108] distribution] which is deemed to be his income by virtue of this section have been charged to [F117] income tax under Chapter 13 of Part 4 of ITTOIA 2005 (sales of foreign dividend coupons)], ^{F118} then that [F119] distribution] shall be charged to income tax.

(4A) The income tax chargeable by virtue of subsection (4) above shall, subject to subsection (5) below, be charged on the full amount of the [F120] distribution] in the year of assessment.

(4B) The person liable for any tax chargeable by virtue of subsection (4) above is the owner or beneficiary, but he shall be entitled to credit for any tax which the [F121] distribution] is shown to have borne.]

(5) [F122] But], in any case where, if the [F108] distribution] had been [F123] relevant foreign income], the computation of tax would have been made by reference to the amount received in the United Kingdom, [F124] the income tax chargeable by virtue of subsection (4) above] shall be computed on the full amount of the sums which have been or will be received in the United Kingdom in the year of assessment or any subsequent year in which the owner remains the owner of the [F107] shares].

(6) In relation to corporation tax, subsections (4) and (5) above shall not apply but, subject to the provisions of the Tax Acts about distributions, the owner or beneficiary shall, in respect of any [F108] distribution] which is deemed to be his income by virtue of this section, be chargeable to corporation tax under Case VI of Schedule D unless he shows that the proceeds of any sale or other realisation of the right to receive that [F108] distribution] have been charged to tax [F125] by virtue of section 18(3B)].

[F126] (7) In this section—

“distribution”, in relation to shares in a company,—

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- (a) has the same meaning as it has in the Corporation Tax Acts (see section 209), but
 - (b) also includes any amount that would be a distribution if the company paying it were resident in the United Kingdom;
“shares” means shares in a company.]
- (8) The Board may by notice require any person to furnish them within such time as they may direct (not being less than 28 days), in respect of all [^{F107}shares] of which he was the owner at any time during the period specified in the notice, with such particulars as they consider necessary for the purposes of this section ^{F127}

Textual Amendments

- F106** S. 730 heading substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by virtue of Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(12)**
- F107** Words in s. 730 substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(2)(b)**
- F108** Words in s. 730 substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(2)(a)**
- F109** Words in s. 730(1)(a) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(3)(a)**
- F110** Words in s. 730(1)(b) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(3)(b)**
- F111** S. 730(1)(c) repealed (with effect in accordance with Sch. 7 para. 2(13) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 2(3)(c), **Sch. 11 Pt. 2(8)**, Note
- F112** S. 730(2) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(4)**
- F113** S. 730(2A) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 51**
- F114** S. 730(2A) repealed (with effect in accordance with Sch. 7 para. 2(13) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 2(5), **Sch. 11 Pt. 2(8)**, Note
- F115** S. 730(3) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(6)**
- F116** S. 730(3) repealed (with effect in accordance with Sch. 6 para. 2(3) of the repealing Act) by Finance Act 2006 (c. 25), Sch. 6 para. 2(2), **Sch. 26 Pt. 3(12)**, Note
- F117** Words in s. 730(4)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 300(3)(a)** (with Sch. 2)
- F118** Words in s. 730(4) and s. 730(4A)(4B) substituted for words in s. 730(4) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 300(3)(b)** (with Sch. 2)
- F119** Word in s. 730(4) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(7)**
- F120** Word in s. 730(4A) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(8)**
- F121** Word in s. 730(4B) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(9)**
- F122** Word in s. 730(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 300(4)(a)** (with Sch. 2)
- F123** Words in s. 730(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 300(4)(b)** (with Sch. 2)
- F124** Words in s. 730(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 300(4)(c)** (with Sch. 2)

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- F125** Words in s. 730(2)(4)(b)(6)(8) substituted (with effect in accordance with Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 7 para. 23** (with Sch. 7 paras. 33-35)
 - F126** S. 730(7) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(10)**
 - F127** Words in s. 730(8) repealed (with effect in accordance with Sch. 7 para. 2(13) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 2(11), **Sch. 11 Pt. 2(8)**, Note
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- Marginal Citations**
- M11** Source—1970 s.470; 1971 Sch.6 71

[^{F128}730A] Treatment of price differential on sale and repurchase of securities.

^{F129}

- Textual Amendments**
- F128** Ss. 730A, 730B inserted (with effect in accordance with s. 80(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 80(1)**
 - F129** Ss. 730A, 730B repealed (with effect in accordance with S.I. 2007/2483, **art. 3**) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 4, **Sch. 27 Pt. 2(14)**, Note

730B Interpretation of section 730A.

^{F130}]

- Textual Amendments**
- F128** Ss. 730A, 730B inserted (with effect in accordance with s. 80(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 80(1)**
 - F130** Ss. 730A, 730B repealed (with effect in accordance with S.I. 2007/2483, **art. 3**) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 4, **Sch. 27 Pt. 2(14)**, Note

[^{F131}730BB] Exchange gains and losses on sale and repurchase of securities

^{F132}]

- Textual Amendments**
- F131** S. 730BB inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 12**
 - F132** S. 730BB repealed (with effect in accordance with S.I. 2007/2483, **art. 3**) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 5, **Sch. 27 Pt. 2(14)**, Note

[^{F133}730C] Exchanges of gilts: traders etc.

^{F134}]

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Textual Amendments

- F133** S. 730C inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 7**
- F134** S. 730C repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 301, **Sch. 3** (with Sch. 2)

Purchase and sale of securities

731 Application and interpretation of sections 732 to 734.

F135

Textual Amendments

- F135** Ss. 731-735 omitted (with effect in accordance with s. 66(6) of the repealing Act) by virtue of Finance Act 2008 (c. 9), **s. 66(1)(c)** (subject to modification to s. 731 by Corporation Tax Act 2009 (c. 4), **Sch. 2 para. 144**)

732 Dealers in securities.

F136

Textual Amendments

- F136** Ss. 731-735 omitted (with effect in accordance with s. 66(6) of the repealing Act) by virtue of Finance Act 2008 (c. 9), **s. 66(1)(c)**

733 Persons entitled to exemptions.

F137

Textual Amendments

- F137** Ss. 731-735 omitted (with effect in accordance with s. 66(6) of the repealing Act) by virtue of Finance Act 2008 (c. 9), **s. 66(1)(c)**

734 Persons other than dealers in securities.

F138

Textual Amendments

- F138** Ss. 731-735 omitted (with effect in accordance with s. 66(6) of the repealing Act) by virtue of Finance Act 2008 (c. 9), **s. 66(1)(c)**

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735 Meaning of “appropriate amount in respect of” interest.

F139

Textual Amendments

F139 Ss. 731-735 omitted (with effect in accordance with s. 66(6) of the repealing Act) by virtue of Finance Act 2008 (c. 9), s. 66(1)(c)

Miscellaneous provisions relating to securities

736 Company dealing in securities: distribution materially reducing value of holding.

F140

Textual Amendments

F140 S. 736 omitted (with effect in accordance with s. 66(7) of the repealing Act) by virtue of Finance Act 2008 (c. 9), s. 66(1)(d)

[^{F141}736A] Manufactured dividends and interest.

Schedule 23A to this Act shall have effect in relation to certain cases where under a contract or other arrangements for the transfer of shares or other securities a person is required to pay to the other party an amount representative of a dividend or payment of interest on the securities.]

Textual Amendments

F141 S. 736A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(1) (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, reg. 2(a); 30.6.1992 specified for certain purposes by S.I. 1992/1346, regs.2, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, regs.2, 3(a), 4(1))

[^{F142}736B] Deemed manufactured payments in the case of stock lending arrangements.

- (1) This section applies where—
 - (a) any interest on securities transferred by the lender under a stock lending arrangement is paid, as a consequence of the arrangement, to a person other than the lender; and
 - (b) no provision is made for securing that the lender receives payments representative of that interest.
- (2) Where this section applies, Schedule 23A and the provisions for the time being contained in any regulations under that Schedule [^{F143}, and section 97 of the Finance Act 1996 (loan relationships: manufactured interest),] shall apply [^{F144} for corporation tax purposes][^{F145}, subject to subsection (2A) below,] as if—

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- (a) the borrower were required under the stock lending arrangement to pay the lender an amount representative of the interest mentioned in subsection (1) (a) above;
- (b) a payment were made by the borrower in discharge of that requirement; and
- (c) that payment were made on the same date as the payment of the interest of which it is representative.

[The borrower is not entitled, by virtue of anything in Schedule 23A or any provision ^{F146}(2A) of regulations under that Schedule, or otherwise—

- (a) to any deduction in computing profits or gains for the purposes of ^{F147}. . . corporation tax, or
 - (b) to any deduction against ^{F148}. . . total profits,
- in respect of any such deemed requirement or payment as is provided for by subsection (2) above.

Where the borrower is a company, an amount may not be surrendered by way of group relief if a deduction in respect of it is prohibited by this subsection.]

(3) In this section—

- “interest” includes dividends; and
- “stock lending arrangement” and “securities” have the same meanings as in section 263B of the 1992 Act.

[See section 736D for provision treating certain arrangements as stock lending ^{F149}(4) arrangements for the purposes of this section.]]

Textual Amendments

- F142** S. 736B inserted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), Sch. 10 para. 3; S.I. 1997/991, art. 2
- F143** Words in s. 736B(2) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 171(2)(a) (with Sch. 2)
- F144** Words in s. 736B(2) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 171(2)(b) (with Sch. 2)
- F145** Words in s. 736B(2) inserted (with application in accordance with s. 84(4) of the amending Act) by Finance Act 2001 (c. 9), s. 84(2)
- F146** S. 736B(2A) inserted (with application in accordance with s. 84(4) of the amending Act) by Finance Act 2001 (c. 9), s. 84(3)
- F147** Words in s. 736B(2A)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 171(3)(a), Sch. 3 Pt. 1 (with Sch. 2)
- F148** Words in s. 736B(2A)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 171(3)(b), Sch. 3 Pt. 1 (with Sch. 2)
- F149** S. 736B(4) inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 4(1)

Modifications etc. (not altering text)

- C7** S. 736B modified (19.7.2006) by Finance Act 2006 (c. 25), s. 139(1)(3)

^{F150}736 Deemed interest: cash collateral under stock lending arrangements

(1) This section applies where—

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- (a) the borrower under a stock lending arrangement is treated under section 736B(2) as paying under that arrangement an amount representative of interest on any securities (“the relevant securities”),
 - (b) an amount of money (“cash collateral”) is payable to or for the benefit of the lender for the purpose of securing the discharge of the requirement to transfer the relevant securities back to the lender,
 - (c) the stock lending arrangement is designed to produce a return to the borrower which equates, in substance, to the return on an investment of money at interest, and
 - (d) the main purpose, or one of the main purposes, of the stock lending arrangement is the obtaining of a tax advantage.
- (2) Where this section applies—
- (a) the [F151Corporation Tax Acts] are to apply as if the borrower receives an amount of interest payable in respect of the cash collateral, and
 - (b) the amount of the interest is calculated in accordance with the following provisions of this section (see, in particular, subsections (3) to (7)).
- (3) The interest is treated for the purposes of the [F151Corporation Tax Acts] as if it were received on the date (“the return date”) on which the borrower transfers the relevant securities back to the lender.
- (4) The interest is treated for the purposes of the [F151Corporation Tax Acts] as if it were payable in respect of the period (“the interest period”)—
- (a) beginning with the date on which the lender transfers the relevant securities to the borrower, and
 - (b) ending with the return date.
- (5) The rate of interest payable in respect of the cash collateral is a rate that is reasonably comparable to the rate that the borrower could obtain by placing the cash collateral on deposit for the interest period.
- (6) For the purposes of this section, the amount of the cash collateral on which the interest is payable is taken to be—
- (a) in any case where the amount of the cash collateral varies at any time on or before the return date, the highest amount of the cash collateral at any time on or before the return date, and
 - (b) in any other case, the amount of the cash collateral as at the return date.
- (7) The amount of the interest which the borrower is treated as receiving in respect of the cash collateral for the interest period is reduced (but not below nil) by any interest which the borrower actually receives in respect of that collateral for that period.
- (8) F152
- (9) If the borrower is a company within the charge to corporation tax—
- (a) the interest which the borrower is treated as receiving is treated for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) as payable to it on a money debt,
 - (b) that money debt is treated for those purposes as a relationship to which section 100 of the Finance Act 1996 applies (money debts etc not arising from the lending of money), and

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- (c) the credits to be brought into account for those purposes in respect of the interest must be determined using an amortised cost basis of accounting.
- (10) The fact that the borrower is treated as receiving an amount of interest is not to be taken as implying that the interest is payable by the lender or any other person.
- (11) For the purposes of this section—
“money” includes money expressed in a currency other than sterling,
“stock lending arrangement” and “securities” have the same meanings as in section 263B of the 1992 Act,
“tax advantage” has the meaning given by ^{F153}section 840ZA].
- (12) For the purposes of this section—
(a) any reference to the transfer of securities back has the same meaning as in section 263B of the 1992 Act (see, in particular, sections 263B(5) and 263C(1) of that Act), but
(b) if it becomes apparent that the borrower will not comply with the requirement to transfer any securities back, the borrower is treated as if he transfers them back on the date on which it becomes so apparent.
- (13) For the purposes of this section it does not matter—
(a) whether the cash collateral is payable by the borrower or by any other person,
(b) whether the cash collateral is payable under the stock lending arrangement or under any other arrangement,
(c) whether collateral in another form is also provided in connection with the stock lending arrangement.
- [See section 736D—
- ^{F154}(14) (a) for provision treating certain arrangements as stock lending arrangements for the purposes of this section, and
(b) for provision treating certain amounts as cash collateral for those purposes.]]

Textual Amendments

F150 S. 736C inserted (with effect in accordance with Sch. 6 para. 3(2)-(4) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 3(1)

F151 Words in s. 736C(2)(a)(3)(4) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 172(2) (with Sch. 2)

F152 S. 736C(8) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 172(3), Sch. 3 Pt. 1 (with Sch. 2)

F153 S. 736C(11): words in definition of "tax advantage" substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 172(4) (with Sch. 2)

F154 S. 736C(14) inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 4(2)

^{F155}736D Quasi-stock lending arrangements and quasi-cash collateral

- (1) In this section “quasi-stock lending arrangement” means so much of any arrangements between two or more persons as are not stock lending arrangements, but are arrangements under which—

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- (a) a person (“the lender”) transfers securities to another person (“the borrower”), and
 - (b) a requirement is imposed on a person to transfer any or all of the securities, or any other property, back to the lender or any other person,
- and it does not matter whether the person on whom that requirement is imposed is the borrower or any other person.
- (2) In this section “quasi-cash collateral”, in relation to any stock lending arrangement or quasi-stock lending arrangement, means—
- (a) any money which is payable for a relevant purpose, plus
 - (b) any other property which is transferable for a relevant purpose.
- (3) Money or other property is payable or transferable for a relevant purpose if it is payable or transferable to or for the benefit of—
- (a) the lender under the stock lending arrangement or quasi-stock lending arrangement, or
 - (b) a person connected with that lender,
- for the purpose of securing the discharge of the requirement to transfer any or all of the securities, or any other property, back to that lender or any other person.
- (4) For the purposes of sections 736B and 736C, a quasi-stock lending arrangement is treated as if it were a stock lending arrangement.
- (5) For the purposes of section 736C, in relation to any stock lending arrangement or quasi-stock lending arrangement,—
- (a) quasi-cash collateral is treated as if it were cash collateral, and
 - (b) the amount of the quasi-cash collateral in relation to the stock lending arrangement or quasi-stock lending arrangement is taken to be the amount of the cash collateral.
- (6) If any property other than money is transferable for a relevant purpose, the amount of the quasi-cash collateral so far as relating to that property is determined by reference to its market value.
- (7) In any case where—
- (a) section 736C applies in relation to a quasi-stock lending arrangement, and
 - (b) the person for whom the tax advantage was designed to be obtained is a person (“the other person”) other than the borrower under that arrangement,
- that section has effect as if the other person were the person who receives the amount of interest mentioned in that section.
- (8) In any case where section 736C applies in relation to a quasi-stock lending arrangement—
- (a) any reference in that section to cash collateral being payable to or for the benefit of the lender includes its being payable to or for the benefit of a person connected with the lender,
 - (b) the reference in subsection (1)(c) of that section to a return to the borrower includes a return to any other person, and
 - (c) any reference in that section to the transfer back of the relevant securities by the borrower to the lender includes the transfer back of any or all of the securities, or any other property, by any person to the lender or any other person.

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(9) Section 839 (connected persons) applies for the purposes of this section.

(10) In this section—

- “money” includes money expressed in a currency other than sterling,
- “property” means property in any form,
- “stock lending arrangement” and “securities” have the same meaning as in section 263B of the 1992 Act,
- “transfer” means a transfer otherwise than by way of sale.]

Textual Amendments

F155 S. 736D inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 4(3)

737 Manufactured dividends: treatment of tax deducted.

F156

Textual Amendments

F156 S. 737 repealed (with effect in accordance with Sch. 10 para. 16(1), Sch. 18 Pt. 6(10) Notes 3, 6 of the repealing Act) by Finance Act 1997 (c. 16), Sch. 10 para. 8, Sch. 18 Pt. 6(10) (with Sch. 10 para. 16(3)); S.I. 1997/991, art. 2

[^{F157}**737A Sale and repurchase of securities: deemed manufactured payments.**

F158

Textual Amendments

F157 Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 122
F158 Ss. 737A-737C repealed (with effect in accordance with S.I. 2007/2483, art. 3) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 7, Sch. 27 Pt. 2(14), Note

737B Interpretation of section 737A.

F159

Textual Amendments

F157 Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 122
F159 Ss. 737A-737C repealed (with effect in accordance with S.I. 2007/2483, art. 3) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 7, Sch. 27 Pt. 2(14), Note

737C Deemed manufactured payments: further provisions.

F160]

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Textual Amendments

F157 Ss. 737A-737C inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [s. 122](#)

F160 Ss. 737A-737C repealed (with effect in accordance with [S.I. 2007/2483](#), [art. 3](#)) by [Finance Act 2007 \(c. 11\)](#), [s. 47\(4\)](#), [Sch. 14 para. 7](#), [Sch. 27 Pt. 2\(14\)](#), Note

Supplemental

[^{F161}737D Power to provide for manufactured payments to be eligible for relief.

^{F162}

Textual Amendments

F161 Ss. 737D, 737E inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), [s. 83\(1\)](#)

F162 S. 737D omitted (21.7.2008) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 35\(1\)](#)

737E [^{F163}Power to modify sections ^{F164}... 730A, 730BB and 737A to 737C]

^{F165}]

Textual Amendments

F161 Ss. 737D, 737E inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), [s. 83\(1\)](#)

F163 S. 737E sidenote substituted (with effect in accordance with [Sch. 38 para. 21\(2\)](#) of the amending Act) by virtue of [Finance Act 2003 \(c. 14\)](#), [Sch. 38 para. 13\(4\)](#)

F164 Words in s. 737E sidenote repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 176\(4\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

F165 S. 737E repealed (with effect in accordance with [S.I. 2007/2483](#), [art. 3](#)) by [Finance Act 2007 \(c. 11\)](#), [s. 47\(4\)](#), [Sch. 14 para. 8](#), [Sch. 27 Pt. 2\(14\)](#), Note

738 Power to amend sections 732, 735 and 737.

^{F166}

Textual Amendments

F166 S. 738 omitted (with effect in accordance with s. 66(6)-(8) of the repealing Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [s. 66\(4\)\(a\)](#)

CHAPTER III

TRANSFER OF ASSETS ABROAD

739 Prevention of avoidance of income tax.

^{F167}

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Textual Amendments

F167 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 177, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

740 Liability of non-transferors.

F168

Textual Amendments

F168 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 177, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

741 [^{F169}**Exemption from sections 739 and 740 (transactions before 5th December 2005)**]

F170

Textual Amendments

F169 S. 741 sidenote substituted (5.12.2005) by virtue of [Finance Act 2006 \(c. 25\), Sch. 7 para. 2\(4\)\(5\)](#)
F170 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 177, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

[^{F171}**741A Exemption from sections 739 and 740 (transactions on or after 5th December 2005)**

F172]

Textual Amendments

F171 S. 741A inserted (5.12.2005) by [Finance Act 2006 \(c. 25\), Sch. 7 para. 3](#)
F172 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 177, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

[^{F173}**741B Application of sections 741 and 741A**

F174

Textual Amendments

F173 Ss. 741B, 741C inserted (5.12.2005) by [Finance Act 2006 \(c. 25\), Sch. 7 para. 4](#)
F174 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 177, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

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741C Cases where there are both old transactions and new transactions

F175]

Textual Amendments
F173 Ss. 741B, 741C inserted (5.12.2005) by Finance Act 2006 (c. 25), Sch. 7 para. 4
F175 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, Sch. 3 Pt. 1 (with Sch. 2)

[^{F176}**741D Section 739: just and reasonable apportionment in certain cases**

F177]

Textual Amendments
F176 S. 741D inserted (5.12.2005) by Finance Act 2006 (c. 25), Sch. 7 para. 5
F177 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, Sch. 3 Pt. 1 (with Sch. 2)

742 [^{F178} Interpretation of this Chapter]

F179

Textual Amendments
F178 S. 742 sidenote substituted (5.12.2005) by virtue of Finance Act 2006 (c. 25), Sch. 7 para. 6(5)(6)
F179 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, Sch. 3 Pt. 1 (with Sch. 2)

743 Supplemental provisions.

F180

Textual Amendments
F180 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, Sch. 3 Pt. 1 (with Sch. 2)

744 No duplication of charge.

F181

Textual Amendments
F181 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, Sch. 3 Pt. 1 (with Sch. 2)

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745 Power to obtain information.

F182

Textual Amendments

F182 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, **Sch. 3 Pt. 1** (with Sch. 2)

746 Persons resident in the Republic of Ireland.

F183

Textual Amendments

F183 Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, **Sch. 3 Pt. 1** (with Sch. 2)

CHAPTER IV

CONTROLLED FOREIGN COMPANIES

Modifications etc. (not altering text)

- C8** Pt. XVII Ch. IV (ss. 747-756) modified (27.7.1993) by 1993 c. 34, **s. 119(3)**
C9 Pt. 17 Ch. 4 modified (10.6.1999) by The Non-resident Companies (General Insurance Business) Regulations 1999 (S.I. 1999/1408), **regs. 3-6**
C10 Pt. 17 Ch. 4 modified (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 45(5)(6)**

747 Imputation of chargeable profits and creditable tax of controlled foreign companies

^{M12}(1) If ^{F184} . . . in any accounting period a company—
(a) is resident outside the United Kingdom, and
(b) is controlled by persons resident in the United Kingdom, and
(c) is subject to a lower level of taxation in the territory in which it is resident,
^{F185} . . . the provisions of this Chapter shall apply in relation to that accounting period.

[^{F186}(1A) A company which would not, apart from this subsection, fall to be regarded as controlled by persons resident in the United Kingdom shall be taken for the purposes of this Chapter to be so controlled if—

- (a) there are two persons who, taken together, control the company;
(b) one of those persons is resident in the United Kingdom and is a person in whose case the 40 per cent test in section 755D(3) is satisfied; and
(c) the other is a person in whose case the 40 per cent test in section 755D(4) is satisfied.]

[^{F187}(1B) In determining, for the purposes of any provision of this Chapter except subsection (1) (a) above, whether a company is a person resident in the United Kingdom, section 249

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of the Finance Act 1994 (under which a company is treated as non-resident if it is so treated for double taxation relief purposes) shall be disregarded.]

- (2) A company which falls within paragraphs (a) to (c) of subsection (1) above is in this Chapter referred to as a “controlled foreign company”.
- (3) [^{F188}Subject to section 748, where] the provisions of this Chapter apply in relation to an accounting period of a controlled foreign company, the chargeable profits of that company for that period and its creditable tax (if any) for that period shall each be apportioned in accordance with section 752 among the persons (whether resident in the United Kingdom or not) who had an interest in that company at any time during that accounting period.
- [^{F189}(3A) In the case of an apportionment to a company resident in the United Kingdom which has made an application under section 751A which has been granted, subsection (3) above has effect subject to that section.]
- (4) Where, on such an apportionment of a controlled foreign company’s chargeable profits for an accounting period as is referred to in subsection (3) above, an amount of those profits is apportioned to a company resident in the United Kingdom then, subject to subsection (5) below—
- (a) a sum equal to corporation tax at the appropriate rate on that apportioned amount of profits, less the portion of the controlled foreign company’s creditable tax for that period (if any) which is apportioned to the resident company, shall be [^{F190}chargeable on] the resident company as if it were an amount of corporation tax chargeable on that company; ^{F191} . . .
- (b) ^{F191}
- and for the purposes of paragraph (a) above “the appropriate rate” means the rate of corporation tax applicable to profits of that accounting period of the resident company in which ends the accounting period of the controlled foreign company [^{F192}which is mentioned in subsection (1) above] or, if there is more than one such rate, the average rate over the whole of that accounting period of the resident company.
- [^{F193}(4A) ^{F194}
- (4B) ^{F194}]
- (5) Tax shall not, by virtue of subsection (4) above, be [^{F195}chargeable on] a company resident in the United Kingdom unless, on the apportionment in question, the aggregate of—
- (a) the amount of the controlled foreign company’s chargeable profits for the accounting period in question which is apportioned to the resident company, and
- (b) any amounts of those chargeable profits which are apportioned to persons who are connected or associated with the resident company,
- is at least [^{F196}25 per cent.] of the total of those chargeable profits.
- [^{F197}(5A) Where the resident company has made an application under section 751A which has been granted, it shall be assumed for the purposes of subsection (5) above that—
- (a) each of the persons who are connected or associated with the resident company has made an application under that section to the same effect, and
- (b) all the applications have been granted.]
- (6) In relation to a company resident outside the United Kingdom—

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- (a) any reference in this Chapter to its chargeable profits for an accounting period is a reference to the amount which, on the assumptions in Schedule 24, would be the amount of the total profits of the company for that period on which, after allowing for any deductions available against those profits, corporation tax would be chargeable;
 - [^{F198}(aa) any reference in this Chapter to its chargeable profits for an accounting period includes (subject to subsections (7) to (9)) income which accrues during that accounting period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary;] and
 - (b) any reference in this Chapter to profits does not include a reference to chargeable gains but otherwise (except as provided by paragraph (a) above) has the same meaning as it has for the purposes of corporation tax.
- [^{F199}(7) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in subsection (6)(aa), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis.
- (8) Where income within subsection (6)(aa) is included in the chargeable profits of a company, any dividend or other distribution received by the company which derives from that income is not included in the chargeable profits of the company to the extent that it is so derived.
 - (9) Any income within subsection (6)(aa) which would (apart from this subsection)—
 - (a) be included in the chargeable profits of a company which is a beneficiary in relation to a settlement and apportioned under subsection (3), and
 - (b) be included in the chargeable profits of a company which is a settlor in relation to the settlement and apportioned under that subsection,is not to be included in the chargeable profits of the company which is a settlor.]

Textual Amendments

- F184** Words in s. 747(1) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 1(2)(a), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**
- F185** Words in s. 747(1) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 1(2)(b), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**
- F186** S. 747(1A) inserted (21.3.2000) by Finance Act 2000 (c. 17), Sch. 31 paras. 3, **9(1)**
- F187** S. 747(1B) inserted (1.4.2002) by Finance Act 2002 (c. 23), **s. 90(1)(2)(a)** (with s. 90(2)(b))
- F188** Words in s. 747(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(3)**; S.I. 1998/3173, **art. 2**
- F189** S. 747(3A) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), **Sch. 15 para. 1(2)**
- F190** Words in s. 747(4)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(4)(a)**; S.I. 1998/3173, **art. 2**
- F191** S. 747(4)(b) and preceding word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 178, **Sch. 3 Pt. 1** (with Sch. 2)
- F192** Words in s. 747(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(4)(b)**; S.I. 1998/3173, **art. 2**
- F193** S. 747(4A)(4B) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 3**
- F194** S. 747(4A)(4B) repealed (with effect in accordance with Sch. 4 para. 24(2) of the repealing Act) by Finance Act 2005 (c. 7), **Sch. 11 Pt. 2(6)**, Note
- F195** Words in s. 747(5) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(5)(a)**; S.I. 1998/3173, **art. 2**

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- F196** Words in s. 747(5) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(5)(b)**; S.I. 1998/3173, **art. 2**
- F197** S. 747(5A) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), **Sch. 15 para. 1(3)**
- F198** S. 747(6)(aa) inserted (with effect in accordance with s. 64(6)(9)-(11) of the amending Act) by Finance Act 2008 (c. 9), **s. 64(2)(a)**
- F199** S. 747(7)-(9) inserted (with effect in accordance with s. 64(6)(9)-(11) of the amending Act) by Finance Act 2008 (c. 9), **s. 64(2)(b)**

Modifications etc. (not altering text)

- C11** S. 747 restricted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 54(1)**
- C12** S. 747 modified (with effect in accordance with Sch. 29 Pt. 14 of the modifying Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 116**
- C13** S. 747A(4)(a) restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **2(2)**; S.I. 2003/1282, **art. 2**
- C14** S. 747(6) applied (6.4.2007 with effect in accordance with s. 1034(1) of the affecting Act) by Income Tax Act 2007 (c. 3), **s. 725(3)** (with Sch. 2)

Marginal Citations

- M12** Source—1984 s.82

[^{F200}747A] Special rule for computing chargeable profits.

^{F201}

Textual Amendments

- F200** S. 747A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 2**
- F201** S. 747A repealed (with effect in accordance with Sch. 4 para. 24(2) of the repealing Act) by Finance Act 2005 (c. 7), Sch. 4 para. 24(1), **Sch. 11 Pt. 2(6)**, Note

748 [^{F202}Cases where section 747(3) does not apply.]

[^{F203M13}(1) No apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company if—]

- (a) in respect of that period the company pursues, within the meaning of Part 1 of Schedule 25, an acceptable distribution policy; or
- (b) throughout that period the company is, within the meaning of Part II of that Schedule, engaged in exempt activities; or
- (c) ^{F204}
- (d) the chargeable profits of the accounting period do not exceed [^{F205}£50,000] or, if the accounting period is less than 12 months, a proportionately reduced amount; [^{F206} or
- (e) as respects the accounting period, the company is, within the meaning of regulations made by the Board for the purposes of this paragraph, resident in a territory specified in the regulations and satisfies—
 - (i) such conditions with respect to its income or gains as may be so specified; and
 - (ii) such other conditions (if any) as may be so specified.]

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- [^{F207}(1A) Regulations under paragraph (e) of subsection (1) above may—
- (a) make different provision for different cases or with respect to different territories;
 - (b) make provision having effect in relation to accounting periods of controlled foreign companies ending not more than one year before the date on which the regulations are made; and
 - (c) contain such supplementary, incidental, consequential and transitional provision as the Board may think fit.]
- (2) ^{F208}
- (3) Notwithstanding that none of paragraphs (a) to [^{F209}(e)] of subsection (1) above applies to an accounting period of a controlled foreign company, [^{F210}no apportionment under section 747(3) falls to be made as regards that accounting period if it is the case that]—
- (a) in so far as any of the transactions the results of which are reflected in the profits arising in that accounting period, [^{F211}or any two or more transactions taken together, the results of at least one of which are so reflected,] achieved a reduction in United Kingdom tax, either the reduction so achieved was minimal or it was not the main purpose or one of the main purposes of that transaction or, as the case may be, of those transactions taken together to achieve that reduction, and
 - (b) it was not the main reason or, as the case may be, one of the main reasons for the company's existence in that accounting period to achieve a reduction in United Kingdom tax by a diversion of profits from the United Kingdom,
- and Part IV of Schedule 25 shall have effect with respect to the preceding provisions of this subsection.
- [^{F212}(4) ^{F213}
- (5) ^{F213}]
- [^{F214}(6) This section is subject to section 748A.]

Textual Amendments

- F202** S. 748 sidenote substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 3(9); S.I. 1998/3173, art. 2
- F203** Words in s. 748(1) substituted (with effect in accordance with Sch. 17 para 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 3(2); S.I. 1998/3173, art. 2
- F204** S. 748(1)(c) and word repealed (with effect in accordance with Sch. 15 para. 10 of the repealing Act) by Finance Act 2007 (c. 11), Sch. 15 para. 8(1), Sch. 27 Pt. 2(15), Note
- F205** Words in s. 748(1)(d) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 3(3); S.I. 1998/3173, art. 2
- F206** S. 748(1)(e) and preceding word inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 3(4); S.I. 1998/3173, art. 2
- F207** S. 748(1A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 3(5); S.I. 1998/3173, art. 2
- F208** S. 748(2) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 3(27); S.I. 1998/3173, art. 2
- F209** Word in s. 748(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 3(7); S.I. 1998/3173, art. 2

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- F210** Words in s. 748(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(8)**; S.I. 1998/3173, **art. 2**
- F211** Words in s. 748(3)(a) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 2**
- F212** S. 748(4)(5) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 4**
- F213** S. 748(4)(5) repealed (with effect in accordance with Sch. 4 para. 24(2) of the repealing Act) by Finance Act 2005 (c. 7), **Sch. 11 Pt. 2(6)**, Note
- F214** S. 748(6) inserted (with effect in accordance with s. 89(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 89(1)**

Marginal Citations

M13 Source—1984 s.83

VALID FROM 19/07/2011

^{F215}**748ZA Exclusion of small profits exemptions**

- (1) Nothing in section 748(1)(da) prevents an apportionment falling to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company (“X”) if condition A, B or C is met.
- (2) Condition A is that at any time before the end of the relevant accounting period a scheme is entered into and—
 - (a) in the absence of this subsection, in consequence of the scheme, section 748(1)(da) would apply to prevent an apportionment falling to be made as regards the relevant accounting period of X, and
 - (b) the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to secure that section 748(1)(da) prevents an apportionment falling to be made as regards that period, or that period and one or more other accounting periods of X.
- (3) Condition B is that at any time before the end of the relevant accounting period a scheme is entered into and—
 - (a) in consequence of the scheme profits are shifted to X from another company (“Y”),
 - (b) the main purpose or one of the main purposes of any party to the scheme in entering into the scheme is to ensure that section 748(1)(da) prevents an apportionment falling to be made as regards the chargeable profits of one or more controlled foreign companies for one or more accounting periods, and
 - (c) the relevant accounting period of X falls wholly or partly within that accounting period or those accounting periods.
- (4) For the purposes of subsection (3), profits are shifted to X from Y if it is reasonable to suppose that in the absence of the scheme, and any similar scheme, the whole or a part of the income which is reflected in X's profits would have been reflected in Y's profits.
- (5) Condition C is that, in determining X's chargeable profits for the relevant accounting period—
 - (a) ^{F216}section 418(5) of CTA 2009 (loan relationships involving connected debtor and creditor where debits exceed credits) has effect so as to treat X,

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for the purposes of Part 5 of that Act, as bringing into account for that period credits in respect of a loan relationship, or]

- (b) Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

- (6) For the purposes of this section—

“apportionment” means an apportionment under section 747(3);

“scheme” means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions.]

Textual Amendments

F215 S. 748ZA inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), Sch. 12 para. 5

F216 S. 748ZA(5)(a) omitted (with effect in accordance with Sch. 5 paras. 6(3), 7(3)(4) of the repealing Act) by Finance Act 2011 (c. 11), Sch. 5 para. 7(2)(a)

[^{F217}748A] Territorial exclusions from exemption under section 748

- (1) Nothing in section 748 prevents an apportionment under section 747(3) falling to be made as regards an accounting period of a controlled foreign company if the company—
- (a) is a company incorporated in a territory to which this section applies as respects that accounting period; or
 - (b) is at any time in that accounting period liable to tax in such a territory by reason of domicile, residence or place of management; or
 - (c) at any time in that accounting period carries on business through a [^{F218}permanent establishment] in such a territory.
- (2) The condition in subsection (1)(c) above is not satisfied as regards an accounting period of a controlled foreign company if the business carried on by the company in that period through [^{F218}permanent establishments] in territories to which this section applies, taken as a whole, is only a minimal part of the whole of the business carried on by the company in that period.
- (3) The territories to which this section applies as respects an accounting period of a controlled foreign company are those specified as such in regulations made by the Treasury.
- (4) Regulations under subsection (3) above—
- (a) may make different provision for different cases or with respect to different territories; and
 - (b) may contain such incidental, supplemental, consequential or transitional provision as the Treasury may think fit.
- (5) A statutory instrument containing regulations under subsection (3) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.]

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Textual Amendments

F217 S. 748A inserted (with effect in accordance with s. 89(3) of the amending Act) by Finance Act 2002 (c. 23), s. 89(2)

F218 Words in s. 748A(1)(c)(2) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)

[^{F219}749 Residence.

- (1) Subject to subsections (2) to (4) and (6) below, in any accounting period in which a company is resident outside the United Kingdom, it shall be regarded for the purposes of this Chapter as resident in that territory in which, throughout that period, it is liable to tax by reason of domicile, residence or place of management.
- (2) If, in the case of any company,—
 - (a) there are in any accounting period two or more territories falling within subsection (1) above, and
 - (b) no election or designation made under paragraph (d) or (e) of subsection (3) below in relation to an earlier accounting period of the company has effect by virtue of section 749A(1) in relation to that accounting period,
 subsection (3) below shall apply with respect to that company and that accounting period.
- (3) Where this subsection applies, the company shall in that accounting period be regarded for the purposes of this Chapter as resident in only one of those territories, namely—
 - (a) if, throughout the accounting period, the company's place of effective management is situated in one of those territories only, in that territory;
 - (b) if, throughout the accounting period, the company's place of effective management is situated in two or more of those territories, in that one of them in which, at the end of the accounting period, the greater amount of the company's assets is situated;
 - (c) if neither paragraph (a) nor paragraph (b) above applies, in that one of the territories falling within subsection (1) above in which, at the end of the accounting period, the greater amount of the company's assets is situated;
 - (d) if—
 - (i) paragraph (a) above does not apply, and
 - (ii) neither paragraph (b) nor paragraph (c) above produces one, and only one, of those territories,
 in that one of them (if any) which is specified in an election made in relation to that accounting period by any one or more persons who together have a majority assessable interest in the company in that accounting period; and
 - (e) if, in a case falling within paragraph (d) above, the time by which any election under that paragraph in relation to that accounting period must be made in accordance with section 749A(3)(b) expires without such an election having been made, in that one of those territories which the Board justly and reasonably designates in relation to that accounting period.
- (4) If, in the case of any company,—
 - (a) there are in any accounting period two or more territories falling within subsection (1) above, and

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- (b) an election or designation made under paragraph (d) or (e) of subsection (3) above in relation to an earlier accounting period of the company has effect by virtue of section 749A(1) in relation to the accounting period mentioned in paragraph (a) above,

the company shall in that accounting period be regarded for the purposes of this Chapter as resident in that one of those territories which is the subject of the election or designation.

- (5) If, in the case of any company, there is in any accounting period no territory falling within subsection (1) above, then, for the purposes of this Chapter, it shall be conclusively presumed that the company is in that accounting period resident in a territory in which it is subject to a lower level of taxation.
- (6) In any case where it becomes necessary for the purposes of subsection (3) above to determine in which of two or more territories the greater amount of a company's assets is situated at the end of an accounting period—
- (a) account shall be taken only of those assets which, immediately before the end of that period, are situated in those territories; and
- (b) the amount of them shall be determined by reference to their market value at that time.
- (7) This section is without prejudice to the provision that may be made in regulations under section 748(1)(e).
- (8) For the purposes of this section, one or more persons together have a "majority assessable interest" in a controlled foreign company in an accounting period of the company if—
- (a) each of them has an assessable interest in the company in that accounting period; and
- (b) it is likely that, were an apportionment of the chargeable profits of the company for that accounting period made under section 747(3), the aggregate of the amounts which would be apportioned to them is greater than 50 per cent. of the aggregate of the amounts which would be apportioned to all the persons who have an assessable interest in the company in that accounting period.
- (9) For the purposes of subsection (8) above, a person has an "assessable interest" in a controlled foreign company in an accounting period of the company if he is one of the persons who it is likely would be chargeable to tax under section 747(4)(a) on an apportionment of the chargeable profits and creditable tax (if any) of the company for that accounting period under section 747(3).

[^{F220}(10) For the purposes of subsection (8) and (9) above, the effect of any application under section 751A shall be disregarded.]]

Textual Amendments

F219 Ss. 749-749B substituted for s. 749 (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 4](#); S.I. 1998/3173, [art. 2](#)

F220 S. 749(10) inserted (with effect in accordance with [Sch. 15 para. 10](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 15 para. 2](#)

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[^{F221}749AElections and designations under section 749: supplementary provisions.

- (1) An election under paragraph (d) or a designation under paragraph (e) of section 749(3) shall have effect in relation to—
 - (a) the accounting period in relation to which it is made (“the original accounting period”), and
 - (b) each successive accounting period of the controlled foreign company in question which precedes the next one in which the eligible territories are different,
 and shall so have effect notwithstanding any change in the persons who have interests in the company or any change in the interests which those persons have in the company.
- (2) For the purposes of subsection (1)(b) above, an accounting period of the controlled foreign company is one in which the eligible territories are different if in the case of that accounting period—
 - (a) at least one of the two or more territories which fell within subsection (1) of section 749 in the original accounting period does not fall within that subsection; or
 - (b) some other territory also falls within that subsection.
- (3) Any election under section 749(3)(d)—
 - (a) must be made by notice given to an officer of the Board;
 - (b) must be made no later than twelve months after the end of the controlled foreign company’s accounting period in relation to which it is made;
 - (c) must state, as respects each of the persons making it, the percentage of the chargeable profits and creditable tax (if any) of the controlled foreign company for that accounting period which it is likely would be apportioned to him on an apportionment under section 747(3) if one were made;
 - (d) must be signed by the persons making it; and
 - (e) is irrevocable.
- (4) Nothing in—
 - (a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or
 - (b) Schedule 1A to the Management Act (claims or elections not included in returns),
 shall apply, whether by virtue of section 754 or otherwise, to an election under section 749(3)(d).
- (5) A designation under section 749(3)(e) is irrevocable.
- (6) Where the Board make a designation under section 749(3)(e), notice of the making of the designation shall be given to every company resident in the United Kingdom which appears to the Board to have had an assessable interest in the controlled foreign company at any time during the accounting period of the controlled foreign company in relation to which the designation is made.
- (7) A notice under subsection (6) above shall specify—
 - (a) the date on which the designation was made;
 - (b) the controlled foreign company to which the designation relates;
 - (c) the accounting period of the controlled foreign company in relation to which the designation is made; and

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(d) the territory designated.

(8) Subsection (9) of section 749 has effect for the purposes of subsection (6) above as it has effect for the purposes of subsection (8) of that section.

[For the purposes of this section the effect of any application under section 751A shall ^{F222}(9) be disregarded.]]

Textual Amendments

F221 Ss. 749-749B substituted for s. 749 (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 4](#); S.I. 1998/3173, [art. 2](#)

F222 S. 749A(9) inserted (with effect in accordance with [Sch. 15 para. 10](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 15 para. 3](#)

[^{F221}749] **Interests in companies.**

(1) For the purposes of this Chapter, the following persons have an interest in a company—

- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;
- (b) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company;
- (c) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit; and
- (d) any other person who, either alone or together with other persons, has control of the company.

(2) Rights which a person has as a loan creditor of a company do not constitute an interest in the company for the purposes of this Chapter.

(3) For the purposes of subsection (1)(b) above, the definition of “distribution” in Part VI shall be construed without any limitation to companies resident in the United Kingdom.

(4) References in subsection (1) above to being entitled to do anything apply where a person—

- (a) is presently entitled to do it at a future date, or
- (b) will at a future date be entitled to do it;

but a person whose entitlement to secure that any income or assets of the company will be applied as mentioned in paragraph (c) of that subsection is contingent upon a default of the company or any other person under any agreement shall not be treated as falling within that paragraph unless the default has occurred.

(5) Where a company has an interest in another company and a third person has, or two or more persons together have, an interest in the first company (as in a case where one company has a shareholding in a controlled foreign company and the first company is controlled by a third company or by two or more persons together) subsections (6) and (7) below apply.

(6) Where this subsection applies, the person who has, or each of the persons who together have, the interest in the first company shall be regarded for the purposes of this Chapter as thereby having an interest in the second company.

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- (7) In any case where this subsection applies, in construing references in this Chapter to one person having the same interest as another, the person or, as the case may be, each of the persons who together have, the interest in the first company shall be treated as having, to the extent of that person's interest in that company, the same interest as the first company has in the second company.
- (8) Where two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they shall be treated for the purposes of this Chapter as having the interest in equal shares.]

Textual Amendments

F221 Ss. 749-749B substituted for s. 749 (with effect in accordance with Sch.17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 4; S.I. 1998/3173, art. 2

750 Territories with a lower level of taxation.

- ^{M14}(1) Without prejudice to [^{F223}subsection (5)] of section 749, a company which, by virtue of [^{F224}any of subsections (1) to (4)] of that section, is to be regarded as resident in a particular territory outside the United Kingdom shall be considered to be subject to a lower level of taxation in that territory if [^{F225}, after giving effect to subsections (1A) and (1B) below,] the amount of tax (“the local tax”) which is paid under the law of that territory in respect of the profits of the company which arise in any accounting period is less than [^{F226}three-quarters] of the corresponding United Kingdom tax on those profits.
- [^{F227}(1A) If in the case of that accounting period there is any income, or any income and any expenditure, of the company—
- (a) which is brought into account in determining the profits of the company in respect of which tax is paid under the law of that territory, but
 - (b) which does not also fall to be brought into account in determining the chargeable profits of the company,
- the local tax shall be treated for the purposes of this Chapter as reduced to what it would have been had that income and any such expenditure not been so brought into account.
- (1B) If—
- (a) under the law of that territory any tax (“the company's tax”) falls to be paid by the company in respect of profits of the company arising in that accounting period,
 - (b) under that law, any repayment of tax, or any payment in respect of a credit for tax, is made to a person other than the company, and
 - (c) that payment or repayment is directly or indirectly in respect of the company's tax,
- the local tax shall be treated for the purposes of this Chapter as reduced (or further reduced) by the amount of that payment or repayment.]
- (2) For the purposes of this Chapter, the amount of the corresponding United Kingdom tax on the profits arising in an accounting period of a company resident outside the United Kingdom is the amount of corporation tax which, on the assumptions set out

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in Schedule 24 and subject to subsection (3) below, would be chargeable in respect of the chargeable profits of the company for that accounting period.

(3) In determining the amount of corporation tax which, in accordance with subsection (2) above, would be chargeable in respect of the chargeable profits of an accounting period of a company resident outside the United Kingdom—

[^{F228}(a) it shall be assumed for the purposes of Schedule 24 that an apportionment under section 747(3) falls to be made as regards that period; and]

[^{F229}(ab) there shall be disregarded the effect of any application under section 751A; and]

(b) there shall be disregarded so much of any relief from corporation tax in respect of income as would be attributable to the local tax and would fall to be given by virtue of any provision of Part XVIII ^{F230} . . . ; and

(c) there shall be deducted from what would otherwise be the amount of that corporation tax—

(i) any amount which (on the assumptions set out in Schedule 24) would fall to be set off against corporation tax by virtue of section 7(2); and

(ii) any amount of income tax or corporation tax actually charged in respect of any of those chargeable profits.

(4) The references in subsection (3)(c) above to an amount falling to be set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the company whether on the making of a claim or otherwise.

[^{F231}(5) ^{F232}]

(6) ^{F232}

(7) ^{F232}

(8) ^{F232}]

Textual Amendments

F223 Words in s. 750(1) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 5(2)(a); S.I. 1998/3173, art. 2

F224 Words in s. 750(1) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 5(2)(b); S.I. 1998/3173, art. 2

F225 Words in s. 750(1) inserted (with effect in accordance with s. 44(4)-(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 44(2)

F226 Words in s. 750(1) substituted (27.7.1993 with application in relation to accounting periods beginning on or after 16.3.1993) by 1993 c. 34, s. 119(1)(2)

F227 S. 750(1A)(1B) inserted (with effect in accordance with s. 44(4)-(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 44(3)

F228 S. 750(3)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 5(3); S.I. 1998/3173, art. 2

F229 S. 750(3)(ab) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), Sch. 15 para. 4

F230 Words in s. 750(3)(b) repealed (with effect in accordance with Sch. 30 of the repealing Act) by Finance Act 2000 (c. 17), Sch. 40 Pt. 2(13), Note

F231 S. 750(5)-(8) inserted (1.5.1995) by Finance Act 1995 (c. 4), Sch. 25 para. 5

F232 S. 750(5)-(8) repealed (with effect in accordance with Sch. 4 para. 24(2) of the repealing Act) by Finance Act 2005 (c. 7), Sch. 11 Pt. 2(6), Note

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Marginal Citations

M14 Source—1984 s.85

[^{F233}750A] Deemed lower level of taxation: designer rate tax provisions.

- (1) Where—
 - (a) in any accounting period a company is to be regarded by virtue of any of subsections (1) to (4) of section 749 as resident in a particular territory outside the United Kingdom, and
 - (b) within the meaning of section 750(1), the local tax in respect of the profits arising to the company in that accounting period is equal to or greater than three-quarters of the corresponding United Kingdom tax on those profits, but
 - (c) that local tax is determined under designer rate tax provisions,
 the company shall be taken for the purposes of this Chapter to be subject to a lower level of taxation in that territory in that accounting period.
- (2) In subsection (1) above “designer rate tax provisions” means provisions—
 - (a) which appear to the Board to be designed to enable companies to exercise significant control over the amount of tax which they pay; and
 - (b) which are specified in regulations made by the Board.
- (3) Regulations under subsection (2) above—
 - (a) may make different provision for different cases or with respect to different territories; and
 - (b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.
- (4) The first regulations under subsection (2) above may make provision having effect in relation to accounting periods beginning not more than fifteen months before the date on which the regulations are made.]

Textual Amendments

F233 S. 750A inserted (with effect in accordance with Sch. 31 para. 9(2) of the amending Act) by Finance Act 2000 (c. 17), Sch. 31 para. 3

751 Accounting periods and creditable tax

- ^{M15}(1) For the purposes of this Chapter, an accounting period of a company resident outside the United Kingdom shall begin—
- (a) whenever the company comes under the control of [^{F234}persons] resident in the United Kingdom;
 - (b) whenever the company ^{F235} . . . commences to carry on business [^{F236}unless an accounting period of the company has previously begun as respects which an apportionment under section 747(3) falls or has fallen to be made]; and
 - (c) whenever an accounting period of the company ends without the company then ceasing either to carry on business or to have any source of income whatsoever.

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- (2) For the purposes of this Chapter, an accounting period of a company resident outside the United Kingdom shall end if and at the time when—
- (a) the company ceases to be under the control of persons resident in the United Kingdom; or
 - (b) the company becomes, or ceases to be, liable to tax in a territory; or
 - ^[F237](bb) ^{F238}.....]
 - (c) the company ceases to have any source of income whatsoever;
- and for the purposes of paragraph (b) above “liable to tax” means liable to tax by reason of domicile, residence or place of management.
- (3) Without prejudice to subsections (1) and (2) above, subsections (3), (5) and (7) of section 12 shall apply for the purposes of this Chapter as they apply for the purposes of corporation tax, but with the omission of so much of those provisions as relates to a company coming or ceasing to be within the charge to corporation tax.
- (4) Where it appears to the Board that the beginning or end of any accounting period of a company resident outside the United Kingdom is uncertain, ^[F239]the Board may by notice] specify as an accounting period of the company such period, not exceeding 12 months, as appears to the Board to be appropriate, and that period shall be treated for the purposes of this Chapter as an accounting period of the company unless ^[F240]the notice] is subsequently amended under subsection (5) below.
- (5) If, on further facts coming to the knowledge of the Board after the ^[F241]giving of a notice under subsection (4) above], it appears to the Board that any accounting period specified in the ^[F242]notice] is not the true accounting period, the Board shall amend the ^[F242]notice] so as to specify the true period.
- ^[F243](5A) Any notice under subsection (4) above, and notice of any amendment of such a notice under subsection (5) above, shall be given to every person who has an assessable interest (as defined in section 749(9)) in the company in the accounting period in question.]
- (6) In this Chapter, in relation to an accounting period of a controlled foreign company ^[F244]as regards which an apportionment under section 747(3) falls to be made], the creditable tax means the aggregate of—
- (a) the amount of any relief from corporation tax in respect of income which (on the assumptions set out in Schedule 24 and assuming the company to be liable for corporation tax on the chargeable profits of that accounting period) would fall to be given to the company by virtue of any provision of Part XVIII in respect of foreign tax attributable to any income which is brought into account in determining those chargeable profits; and
 - (b) any amount which (on those assumptions) would fall to be set off against corporation tax on those chargeable profits by virtue of section 7(2); and
 - (c) the amount of any income tax or corporation tax actually charged in respect of the chargeable profits of that accounting period, less any of that tax which has been or falls to be repaid to the company, whether on the making of a claim or otherwise.

Textual Amendments

F234 1990 s.89 and Sch.14 para.9 (correction of errors)—deemed always to have had effect. Previously “the persons”.

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.
Changes to legislation: *Income and Corporation Taxes Act 1988, PART XVII is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F235** Words in s. 751(1)(b) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 6(2)(a), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**
- F236** Words in s. 751(1)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 6(2)(b)**; S.I. 1998/3173, **art. 2**
- F237** 1990 s.67(2), (4) *on and after 20 March 1990.*
- F238** S. 751(2)(bb) repealed (retrospective to 30.11.1993) by Finance Act 1994 (c. 9), s. 251(1)(4), **Sch. 26 Pt. 8**, Note
- F239** Words in s. 751(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by virtue of Finance Act 1998 (c. 36), **Sch. 17 para. 6(3)(a)**; S.I. 1998/3173, **art. 2**
- F240** Words in s. 751(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by virtue of Finance Act 1998 (c. 36), **Sch. 17 para. 6(3)(b)**; S.I. 1998/3173, **art. 2**
- F241** Words in s. 751(5) substituted (with effect in accordance with Sch. 17 para. 37 of amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 6(4)(a)**; S.I. 1998/3173, **art. 2**
- F242** Words in s. 751(5) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 6(4)(b)**; S.I. 1998/3173, **art. 2**
- F243** S. 751(5A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 6(5)**; S.I. 1998/3173, **art. 2**
- F244** Words in s. 751(6) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 6(6)**; S.I. 1998/3173, **art. 2**

Modifications etc. (not altering text)

- C15** S. 751(1)-(5A) applied (6.4.2007 with effect in accordance with s. 1034(1) of the affecting Act) by Income Tax Act 2007 (c. 3), s. **725(3)** (with Sch. 2)

Marginal Citations

- M15** Source—1984 s.86

751A Reduction in chargeable profits for certain activities of EEA business establishments

- (1) This section applies if—
- (a) an apportionment under section 747(3) falls to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,
 - (b) throughout that period the controlled foreign company has a business establishment in an EEA territory,
 - (c) throughout that period there are individuals who work for the controlled foreign company in that territory, and
 - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in that period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period to be reduced by an amount (“the specified amount”) specified in the application (including to nil).
- (3) If the Commissioners grant the application—
- (a) those chargeable profits are treated as reduced by the specified amount, and
 - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in those chargeable profits,

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for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

- (4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the amount (if any) equal to so much of those chargeable profits as can reasonably be regarded as representing the net economic value which—
- (a) arises to the appropriate body of persons (taken as a whole), and
 - (b) is created directly by qualifying work.
- (5) For the purposes of subsection (4) “net economic value” does not include any value which derives directly or indirectly from the reduction or elimination of any liability of any person to any tax or duty imposed under the law of any territory.
- (6) For the purposes of subsection (4) “the appropriate body of persons” means—
- (a) if the controlled foreign company is not a member of a group of companies, the controlled foreign company and the persons who have an interest in it at any time in the relevant accounting period, and
 - (b) if the controlled foreign company is a member of a group of companies, all the persons falling within paragraph (a) and any other person who is a member of that group of companies,
- and for the purposes of this subsection “group of companies” means a company and any other companies of which it has control.
- (7) For the purposes of subsection (4) “qualifying work” means work which—
- (a) is done in any EEA territory in which the controlled foreign company has a business establishment throughout the relevant accounting period, and
 - (b) is done in that territory by individuals working for the controlled foreign company there.
- (8) Any reference in this section to a business establishment of a controlled foreign company in an EEA territory is to be construed in accordance with paragraph 7 of Schedule 25 (but as if the reference in that paragraph to the territory in which the company is resident were to the EEA territory).
- (9) For the purposes of this section individuals are not to be regarded as working for a company in any territory unless—
- (a) they are employed by the company in the territory, or
 - (b) they are otherwise directed by the company to perform duties on its behalf in the territory.

VALID FROM 21/07/2009

^{F245}751A Reduction in chargeable profits for certain financing income

- (1) This section applies if—
- (a) an apportionment under section 747(3) falls to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,

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- (b) the chargeable profits of the controlled foreign company for the relevant accounting period would, apart from this section, include an amount of income in respect of a payment made by another company (“the payer”),
 - (c) the amount that the payer brings into account for the purposes of corporation tax in respect of the payment is reduced (in part or in full) by virtue of Part 3 of Schedule 15 to FA 2009 (tax treatment of financing costs and income), and
 - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in the relevant accounting period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period (“the chargeable profits”) to be reduced by an amount (“the specified amount”) specified in the application (including to nil).
- (3) If the Commissioners grant the application—
- (a) the chargeable profits are treated as reduced by the specified amount, and
 - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,
- for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
- (4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the relevant amount.
- (5) In subsection (4) “the relevant amount” means the amount (if any) by which it is just and reasonable that the chargeable profits should be treated as reduced, having regard to the effect of Parts 3 and 4 of Schedule 15 to FA 2009 on amounts brought into account for the purposes of corporation tax by the payer, or any other company.]

Textual Amendments

F245 S. 751AA inserted (with effect in accordance with [Sch. 16 para. 25](#) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 16 para. 23](#)

VALID FROM 19/07/2011

[^{F246}751AA] Reduction in chargeable profits: failure to qualify for exemptions

- (1) This section applies if—
- (a) an apportionment under section 747(3) would fall to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,
 - (b) but for a relevant failure, section 748(1)(ba) or (bb) would have prevented such an apportionment, and
 - (c) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in that period.

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- (2) “Relevant failure” means—
- (a) in the case of section 748(1)(ba), one or both of the following—
 - (i) a failure to satisfy the requirement of paragraph 12E of Schedule 25 (requirement as to company's UK connection) in circumstances where the requirement would be satisfied if the reference in subparagraph (3)(a) of that paragraph to 10% were a reference to 50%, and
 - (ii) a failure to satisfy the requirement of paragraph 12F of that Schedule (finance income and relevant IP income) in circumstances where the relevant IP income of the controlled foreign company for the accounting period does not exceed 5% of the company's gross income for that period, and
 - (b) in the case of section 748(1)(bb), a failure to satisfy the requirement of paragraph 12M of that Schedule (finance income).
- (3) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period (“the chargeable profits”) to be reduced to an amount specified in the application (“the specified amount”).
- The specified amount may be nil.
- (4) If the Commissioners grant the application—
- (a) the chargeable profits are treated as reduced to the specified amount, and
 - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,
- for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
- (5) The Commissioners may grant the application only if—
- (a) they are satisfied that the specified amount is not less than the relevant amount, and
 - (b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AC.
- (6) “The relevant amount” means—
- (a) if the relevant failure is within subsection (2)(a), the sum of—
 - (i) the excess finance and IP income (if any) for the relevant accounting period, and
 - (ii) in a case where there is a failure specified in subsection (2)(a)(i), so much (if any) of the net chargeable profits for that period as are not excluded by subsection (8), and
 - (b) if the relevant failure is within subsection (2)(b)—
 - (i) the amount (if any) by which the controlled foreign company's finance income for the relevant accounting period exceeds 5% of its gross income for that period, or
 - (ii) if that amount is a negligible amount, nil.
- (7) “The excess finance and IP income” for the relevant accounting period means—

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.

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- (a) the amount (if any) by which the total of the controlled foreign company's finance income and relevant IP income for that period exceeds 5% of its gross income for that period, or
 - (b) if that amount is a negligible amount, nil.
- (8) Net chargeable profits are excluded by this subsection if, and to the extent that, they can reasonably be regarded—
- (a) as representing the net economic value which—
 - (i) arises to the appropriate body of persons (taken as a whole), and
 - (ii) is created directly by qualifying work, or
 - (b) as not being wholly or partly attributable, directly or indirectly, to transactions with persons within the charge to United Kingdom tax.
- (9) In subsection (8)(a) “qualifying work” means work which—
- (a) is done in the territory in which the controlled foreign company is resident, and
 - (b) is done in that territory by individuals working for the controlled foreign company there.
- (10) A transaction with a company which is within the charge to United Kingdom tax only because it carries on a trade in the United Kingdom through a permanent establishment there is within subsection (8)(b) only if the transaction is attributable to activities carried on through that establishment.
- (11) For the purposes of subsections (8) and (9)—
- (a) section 751A(5), (6) and (9) applies as it applies for the purposes of the equivalent provisions of section 751A, and
 - (b) paragraph 5(2) to (5) of Schedule 25 (residence of controlled foreign company) applies as it applies in relation to Part 2 of that Schedule.
- (12) In this section—
- “finance income” has the meaning given by paragraph 12F(3) of Schedule 25 (with references to C read as references to the controlled foreign company);
 - “relevant IP income” has the meaning given by paragraph 12F(4) of that Schedule;
 - “net chargeable profits” means chargeable profits excluding so much of those profits as is directly attributable to the finance income or relevant IP income of the controlled foreign company;
 - “UK-connected gross income” has the same meaning as in paragraph 12E of Schedule 25;
 - “United Kingdom tax” means corporation tax or income tax;
- and paragraph 12G of that Schedule (gross income) applies for the purposes of this section as it applies for the purposes of Part 2A of that Schedule (with references to C read as references to the controlled foreign company).]

Textual Amendments

F246 S. 751AB inserted (with effect in accordance with [Sch. 12 para. 14\(2\)](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 para. 2](#)

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.
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VALID FROM 19/07/2011

^{F247}751A Reduction in chargeable profits following an exempt period

- (1) This section applies if—
 - (a) an exempt period in relation to a controlled foreign company ends in accordance with paragraph 15F(2) of Schedule 25 (time exempt period ends if there is an early termination event), other than by reason of an early termination event within paragraph 15F(3)(b),
 - (b) an accounting period (“the relevant accounting period”) of the company ends after that exempt period but before the time the exempt period would have ended had paragraph 15F(2) of that Schedule not applied,
 - (c) an apportionment under section 747(3) would fall to be made as regards the relevant accounting period, and
 - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in that period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for that accounting period (“the chargeable profits”) to be reduced to an amount (“the specified amount”) specified in the application (which may be nil).
- (3) If the Commissioners grant the application—
 - (a) the chargeable profits are treated as reduced to the specified amount, and
 - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
- (4) The Commissioners may grant the application only if—
 - (a) they are satisfied that the specified amount is not less than the relevant amount, and
 - (b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AB.
- (5) “The relevant amount” means the amount (if any) equal to so much of the chargeable profits as it is just and reasonable to regard as referable to—
 - (a) the relevant transaction which triggered the end of the exempt period, or
 - (b) any later relevant transaction occurring before the time the exempt period would have ended had paragraph 15F(2) of Schedule 25 not applied.
- (6) “Relevant transaction” has the meaning given by paragraph 15E of Schedule 25 (and it does not matter if the transaction occurs pursuant to an agreement entered into by the controlled foreign company before the relevant time (within the meaning of paragraph 15G of that Schedule)).]

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.

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Textual Amendments

F247 S. 751AC inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), Sch. 12 para. 7

751B Section 751A: supplementary

- (1) An application by a company under section 751A—
 - (a) must be made in such form as the HMRC Commissioners may determine,
 - (b) must be accompanied by such documents (or copies of documents) in the company's possession or power as those Commissioners may reasonably require for the purpose of determining whether to grant the application, and
 - (c) must contain such information as those Commissioners may reasonably require for that purpose.
- (2) An application by a company under section 751A—
 - (a) may be made at any time on or before the filing date (within the meaning of Schedule 18 to the Finance Act 1998) for the relevant company tax return of the company, and
 - (b) may be amended or withdrawn at any time before the application is determined by those Commissioners.
- (3) If an application by a company under section 751A is granted after the company has delivered its relevant company tax return, it has 30 days beginning with the day on which the application is granted in which to amend that return to give effect to section 751A.
- (4) The time limits otherwise applicable to an amendment of a company tax return do not prevent an amendment being made under subsection (3).
- (5) If the HMRC Commissioners refuse an application by a company under section 751A, the company may appeal to the Special Commissioners against the refusal.
- (6) Notice of an appeal must be given in writing to the HMRC Commissioners within 30 days after the application is refused.
- (7) On an appeal—
 - (a) if the Special Commissioners are satisfied that the relevant amount is a different amount from the amount specified in the application, they must direct the HMRC Commissioners to grant the application as if the amount specified in it were that different amount,
 - (b) if the Special Commissioners are satisfied that the relevant amount is the amount specified in the application, they must direct the HMRC Commissioners to grant the application, and
 - (c) in any other case, the Special Commissioners must confirm the refusal.
- (8) For the purposes of subsection (7) “the relevant amount” means the amount (if any) equal to so much of the chargeable profits mentioned in subsection (4) of section 751A as can reasonably be regarded as representing the value mentioned in that subsection.
- (9) Part 5 of the Management Act (appeals against assessments to tax), apart from section 50, applies in relation to an appeal under this section as it applies in relation to an appeal against an assessment to tax.

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.
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- (10) In this section “relevant company tax return”, in relation to a company, means the return for the accounting period for which—
- (a) any sum is chargeable on the company under section 747(4)(a), or
 - (b) any sum would be so chargeable but for section 751A,
- in respect of the chargeable profits of the controlled foreign company for the accounting period mentioned in section 751A(1).
- (11) In this section “the HMRC Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

[^{F248}752 Apportionment of chargeable profits and creditable tax

- (1) This section applies in any case where an apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company.
- (2) Where—
- (a) the persons who have relevant interests in the controlled foreign company at any time in the relevant accounting period have those interests by virtue only of directly or indirectly holding ordinary shares of the company,
 - (b) each of those persons satisfies the condition that he is either—
 - (i) resident in the United Kingdom throughout that accounting period, or
 - (ii) resident in the United Kingdom at no time in that accounting period, and
 - (c) no company which has an intermediate interest in the controlled foreign company at any time in the relevant accounting period has that interest otherwise than by virtue of directly or indirectly holding ordinary shares of the controlled foreign company,
- subsection (3) below shall apply.
- (3) Where this subsection applies, the apportionment of the controlled foreign company's chargeable profits and creditable tax (if any) for the relevant accounting period shall be made among the persons who have relevant interests in the company at any time in that period in direct proportion to the percentage of the issued ordinary shares of the controlled foreign company which, in accordance with section 752B, each of those relevant interests represents.
- (4) Where subsection (3) above does not apply, the apportionment of the controlled foreign company's chargeable profits and creditable tax (if any) for the relevant accounting period shall be made on a just and reasonable basis among the persons who have relevant interests in the company at any time in that period.]

Textual Amendments

F248 Ss. 752-752C substituted for s. 752 (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 7](#); S.I. 1998/3173, [art. 2](#)

[^{F249}752A Relevant interests.

- (1) This section has effect for the purpose of determining for the purposes of this Chapter who has a relevant interest in a controlled foreign company at any time; and references in this Chapter to relevant interests shall be construed accordingly.

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.

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- (2) A UK resident company which has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (3) below otherwise provides.
- (3) A UK resident company which has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if it has the interest by virtue of having a direct or indirect interest in another UK resident company.
- (4) A related person who has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (5) or (6) below otherwise provides.
- (5) A related person who has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if he has the interest by virtue of having a direct or indirect interest in—
 - (a) a UK resident company; or
 - (b) another related person.
- (6) A related person who has a direct or indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest to the extent that a UK resident company—
 - (a) has the whole or any part of the same interest indirectly, by virtue of having a direct or indirect interest in the related person, and
 - (b) by virtue of that indirect interest in the controlled foreign company, has a relevant interest in the company by virtue of subsection (2) above.
- (7) A person who—
 - (a) has a direct interest in a controlled foreign company, but
 - (b) does not by virtue of subsections (2) to (6) above have a relevant interest in the company by virtue of that interest,
 has a relevant interest in the company by virtue of that interest unless subsection (8) below otherwise provides.
- (8) A person does not by virtue of subsection (7) above have a relevant interest in a controlled foreign company by virtue of having a direct interest in the company to the extent that another person—
 - (a) has the whole or any part of the same interest indirectly, and
 - (b) by virtue of that indirect interest, has a relevant interest in the company by virtue of subsections (2) to (6) above.
- (9) No person has a relevant interest in a controlled foreign company otherwise than as provided by subsections (2) to (8) above.
- (10) In this section—

“related person” means a person who—

 - (a) is not a UK resident company, but
 - (b) is connected or associated with a UK resident company which has by virtue of subsection (2) above a relevant interest in the controlled foreign company in question;

“UK resident company” means a company resident in the United Kingdom.]

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Textual Amendments

F249 Ss. 752-752C substituted for s. 752 (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 7](#); S.I. 1998/3173, [art. 2](#)

[^{F249}752B] **Section 752(3): the percentage of shares which a relevant interest represents.**

- (1) For the purposes of section 752(3) above, where a person has a relevant interest in a controlled foreign company by virtue of indirectly holding issued ordinary shares of the company, the percentage of the issued ordinary shares of the company which the relevant interest represents is equal to—

$$P \times S$$

where—

P is the product of the appropriate fractions of that person and each of the share-linked companies through which he indirectly holds the shares in question, other than the lowest share-linked company; and

S is the percentage of issued ordinary shares of the controlled foreign company which is held directly by the lowest share-linked company.

- (2) In subsection (1) above and this subsection—

“the appropriate fraction”, in the case of a person who directly holds ordinary shares of a share-linked company, means that fraction of the issued ordinary shares of that company which his holding represents;

“the lowest share-linked company”, in relation to a person who indirectly holds ordinary shares of a controlled foreign company, means the share-linked company which directly holds the shares in question;

“share-linked company” means a company which is share-linked to the controlled foreign company in question.

- (3) Where a person has different indirect holdings of shares of the controlled foreign company (as in a case where different shares are held through different companies which are share-linked to the controlled foreign company)—

(a) subsection (1) above shall apply separately in relation to the different holdings with any necessary modifications; and

(b) for the purposes of section 752(3) above the percentage of the issued ordinary shares of the company which the relevant interest represents is the aggregate of the percentages resulting from those separate applications.

- (4) Where, for the purposes of subsection (3) of section 752, the percentage of the issued ordinary shares of the controlled foreign company which a person directly or indirectly holds varies during the relevant accounting period, he shall be treated for the purposes of that subsection as holding throughout that period that percentage of the issued ordinary shares of the company which is equal to the sum of the relevant percentages for each holding period in the relevant accounting period.

- (5) For the purposes of subsection (4) above—

“holding period”, in the case of any person, means a part of the relevant accounting period during which the percentage of the issued ordinary shares

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of the controlled foreign company which the person holds (whether directly or indirectly) remains the same;

“the relevant percentage”, in the case of a holding period, means the percentage equal to—

$$\frac{P \times H}{A}$$

where—

P is the percentage of the issued ordinary shares of the controlled foreign company which the person in question directly or indirectly holds in the holding period, as calculated in accordance with subsections (1) to (3) above so far as applicable;

H is the number of days in the holding period; and

A is the number of days in the relevant accounting period.]

Textual Amendments

F249 Ss. 752-752C substituted for s. 752 (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 7](#); S.I. 1998/3173, [art. 2](#)

[^{F249}752] Interpretation of apportionment provisions.

- (1) In this section “the relevant provisions” means sections 752 to 752B and this section.
- (2) For the purposes of the relevant provisions—
 - (a) a person has a direct interest in a company if (and only if) he has an interest in the company otherwise than by virtue of having an interest in another company;
 - (b) a person has an indirect interest in a company if (and only if) he has an interest in the company by virtue of having an interest in another company;
 - (c) a person indirectly holds shares of a controlled foreign company if (and only if) he directly holds ordinary shares of a company which is share-linked to the controlled foreign company.
- (3) For the purposes of the relevant provisions, a company is “share-linked” to a controlled foreign company if it has an interest in the controlled foreign company only by virtue of directly holding ordinary shares—
 - (a) of the controlled foreign company, or
 - (b) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) above, or
 - (c) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) or (b) above,

and so on.
- (4) For the purposes of the relevant provisions, a company (“company A”) has an intermediate interest in a controlled foreign company if (and only if)—

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- (a) it has a direct or indirect interest in the controlled foreign company; and
 - (b) one or more other persons have relevant interests in the controlled foreign company by virtue of having a direct or indirect interest in company A.
- (5) Any interest or shares held by a nominee or bare trustee shall be treated for the purposes of the relevant provisions as held by the person or persons for whom the nominee or bare trustee holds the interest or shares.
- (6) Where—
- (a) an interest in a controlled foreign company is held in a fiduciary or representative capacity, and
 - (b) subsection (5) above does not apply, but
 - (c) there are one or more identifiable beneficiaries,
- the interest shall be treated for the purposes of the relevant provisions as held by that beneficiary or, as the case may be, as apportioned on a just and reasonable basis among those beneficiaries.
- (7) In the relevant provisions—
- “bare trustee” means a person acting as trustee—
 - (a) for a person absolutely entitled as against the trustee; or
 - (b) for any person who would be so entitled but for being a minor or otherwise under a disability; or
 - (c) for two or more persons who are or would, but for all or any of them being a minor or otherwise under a disability, be jointly so entitled;
 - “ordinary shares”, in the case of any company, means shares of a single class, however described, which is the only class of shares issued by the company;
 - “the relevant accounting period” means the accounting period mentioned in section 752(1);
 - “share” includes a reference to a fraction of a share.]

Textual Amendments

F249 Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 7; S.I. 1998/3173, art. 2

753 Notices and appeals.

F250

Textual Amendments

F250 S. 753 repealed (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 8, Sch. 27 Pt. 3(27), Note; S.I. 1998/3173, art. 2

754 Assessment, recovery and postponement of tax.

^{M16}(1) Subject to the following provisions of this section, the provisions of section 747(4) (a) relating to [^{F251}the charging] of a sum as if it were an amount of corporation tax shall be taken as applying, subject to the provisions of the Taxes Acts, and to

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any necessary modifications, all enactments applying generally to corporation tax, including [^{F252}those relating to company tax returns,] those relating to the assessing, collecting and receiving of corporation tax, those conferring or regulating a right of appeal and those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

[^{F253}(1A) Accordingly (but without prejudice to subsection (1) above) the Management Act shall have effect as if—

- (a) any reference to corporation tax included a reference to a sum chargeable under section 747(4)(a) as if it were an amount of corporation tax; and
- (b) any reference to profits of a company included a reference to an amount of chargeable profits of a controlled foreign company which falls to be apportioned to a company under section 747(3).]

[^{F254}(2) For the purposes of the Taxes Acts, any sum chargeable on a company under section 747(4)(a) is chargeable for the accounting period of the company in which ends that one of the controlled foreign company's accounting periods the chargeable profits of which give rise to that sum.]

[^{F255}(2A) Where—

- (a) an apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company, and
- (b) the apportionment falls to be made in accordance with section 752(4) on a just and reasonable basis, and
- (c) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return,

the Board may determine that another basis is to be used for the apportionment.

(2B) For the purposes of subsection (2A) above, the Board may by notice require the company making the return—

- (a) to produce to them such documents in the company's power or possession, and
- (b) to provide them with such information, in such form,

as they may reasonably require for the purpose of determining the basis which is to be used for making the apportionment.

(2C) The provisions of paragraphs 27 to 29 of Schedule 18 to the Finance Act 1998 (notice to produce documents etc for the purposes of enquiry: supplementary provisions and penalty) shall apply in relation to a notice under subsection (2B) above.

(2D) Once the Board have determined under subsection (2A) above the basis to be used for the apportionment, matters shall proceed as if that were the only basis allowed by the Tax Acts.

(2E) A determination under subsection (2A) above may be questioned on an appeal against an amendment, made under paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998, of the company's company tax return, but only on the ground that the basis of apportionment determined by the Board is not just and reasonable.]

[^{F256}(3) Where any appeal—

- (a) under paragraph 34(3) of Schedule 18 to the Finance Act 1998 against an amendment of a company tax return, or

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- (b) under paragraph 48 of that Schedule against a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule),

involves any question concerning the application of this Chapter in relation to any particular person, that appeal shall be to the Special Commissioners.

(3A) Where—

- (a) any such question as is mentioned in subsection (3) above falls to be determined by the Special Commissioners for the purposes of any proceedings before them, and
- (b) the question is one whose resolution is likely to affect the liability of more than one person under this Chapter in respect of the controlled foreign company concerned,

subsection (3B) below shall apply.

(3B) Where this subsection applies—

- (a) each of the persons whose liability under this Chapter in respect of the controlled foreign company concerned is likely to be affected by the resolution of the question shall be entitled to appear and be heard by the Special Commissioners, or to make representations to them in writing;
- (b) the Special Commissioners shall determine that question separately from any other questions in those proceedings; and
- (c) their determination on that question shall have effect as if made in an appeal to which each of those persons was a party.]

(4) ^{F257}

(5) Schedule 26 shall have effect with respect to the reliefs which may be claimed by a company resident in the United Kingdom which has a liability for tax in respect of an amount of chargeable profits; and no reliefs other than those provided for by that Schedule shall be allowed against any such liability.

(6) In any case where—

- (a) the whole or any part of the tax [^{F258}chargeable] on a company (“the [^{F258}chargeable] company”) by virtue of section [^{F259}747(4)(a)] is not paid before the date on which it is due and payable in accordance with this Act or, as the case may be, the Management Act; and
- (b) the Board serve a notice of liability to tax under this subsection on another company (“the responsible company”) which is resident in the United Kingdom and holds or has held (whether directly or indirectly) [^{F260}the whole or any part of] the same interest in the controlled foreign company as is or was held by the [^{F258}chargeable] company,

[^{F261}the whole or, as the case may be, the corresponding part of] the tax [^{F258}chargeable] on the [^{F258}chargeable] company or, as the case may be, so much of it as remains unpaid shall be payable by the responsible company upon service of the notice.

(7) Where a notice of liability is served under subsection (6) above—

- (a) [^{F262}the whole, or (as the case may be) the corresponding part, of] any interest due on the tax [^{F263}chargeable] on the [^{F263}chargeable] company and not paid; and
- (b) any interest accruing due on that tax after the date of service,

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shall be payable by the responsible company [^{F264}(so far as referable to tax payable by the responsible company by virtue of the notice)].

(8) In any case where—

- (a) a notice of liability is served on the responsible company under subsection (6) above, and
- (b) the relevant tax and any interest payable by the responsible company under subsection (7) above is not paid by that company before the expiry of the period of three months beginning on the date of service of the notice,

that tax and interest may, without prejudice to the right of recovery from the responsible company, be recovered from the [^{F265}chargeable] company.

(9) In this section “the Taxes Acts” has the same meaning as in the Management Act.

Textual Amendments

- F251** Words in s. 754(1) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(2)(a); S.I. 1998/3173, art. 2
- F252** Words in s. 754(1) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(2)(b); S.I. 1998/3173, art. 2
- F253** S. 754(1A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(3); S.I. 1998/3173, art. 2
- F254** S. 754(2) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(4); S.I. 1998/3173, art. 2
- F255** S. 754(2A)-(2E) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(5); S.I. 1998/3173, art. 2
- F256** S. 754(3)-(3B) substituted for s. 754(3) (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(6); S.I. 1998/3173, art. 2
- F257** S. 754(4) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(7), Sch. 27 Pt. 3(27), Note; S.I. 1998/3173, art. 2
- F258** Words in s. 754(6) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(8)(a); S.I. 1998/3173, art. 2
- F259** Words in s. 754(6)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(8)(b); S.I. 1998/3173, art. 2
- F260** Words in s. 754(6)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(8)(c); S.I. 1998/3173, art. 2
- F261** Words in s. 754(6) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(8)(d); S.I. 1998/3173, art. 2
- F262** Words in s. 754(7)(a) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(9)(a); S.I. 1998/3173, art. 2
- F263** Words in s. 754(7)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(9)(b); S.I. 1998/3173, art. 2
- F264** Words in s. 754(7)(b) added (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(9)(c); S.I. 1998/3173, art. 2
- F265** Word in s. 754(8) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(10); S.I. 1998/3173, art. 2

Modifications etc. (not altering text)

- C16** See 1970(M) s.55(1)(g) and (6A).

Marginal Citations

- M16** Source—1984 s.89(1)-(4), (7)-(11)

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[^{F266}754] Returns where it is not established whether acceptable distribution policy applies.

- (1) This section applies where—
 - (a) a company resident in the United Kingdom (“the UK company”) has an interest in a controlled foreign company at any time during an accounting period of the controlled foreign company;
 - (b) the UK company delivers a company tax return; and
 - (c) at the time when the UK company delivers the company tax return, it is not established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period.
- (2) If the UK company is of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company pursues such a policy.
- (3) If the UK company is not of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company does not pursue such a policy.
- (4) In any case where—
 - (a) the UK company acts in pursuance of subsection (2) above, but
 - (b) it becomes established that the controlled foreign company has not pursued an acceptable distribution policy in relation to the accounting period,the UK company shall amend the company tax return on the basis that the accounting period is not one in relation to which the controlled foreign company pursues an acceptable distribution policy.
- (5) In any case where—
 - (a) the UK company acts in pursuance of subsection (3) above, but
 - (b) it becomes established that the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period,the UK company shall amend the company tax return on the basis that the accounting period is one in relation to which the controlled foreign company pursues an acceptable distribution policy.
- (6) Any amendment required to be made to the company tax return by virtue of subsection (4) or (5) above (“an ADP amendment”) shall be made by the UK company before the expiration of the period of 30 days next following the end of the period allowed for establishing an ADP in relation to the accounting period of the controlled foreign company.
- (7) Subject to subsection (8) below, the making of any ADP amendment is subject to, and must be in accordance with, the other provisions of the Corporation Tax Acts as they apply for the purposes of this Chapter.
- (8) The time limits otherwise applicable to amendment of a company tax return do not apply to an ADP amendment.

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- (9) A company which fails to make an ADP amendment required by subsection (4) above within the time allowed for doing so shall be liable to a tax-related penalty under paragraph 20 of Schedule 18 to the Finance Act 1998 (penalty, not exceeding amount of tax understated, for incorrect or uncorrected return).
- (10) For the purposes of this section, if it has not previously been established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period, it shall be taken to be established immediately after the end of the period allowed for establishing an ADP in relation to that accounting period.
- (11) In this section, “the period allowed for establishing an ADP” means, in relation to an accounting period of a controlled foreign company, the period ending with the expiration of—
- (a) subject to paragraph (b) below, the period of eighteen months next following the end of the accounting period; or
 - (b) if the Board have, in the case of the accounting period, allowed further time under paragraph 2(1)(b) of Schedule 25, the further time so allowed.
- (12) In this section any reference to a controlled foreign company pursuing an acceptable distribution policy in relation to an accounting period shall be construed in accordance with Part I of Schedule 25.]

Textual Amendments

F266 S. 754A inserted (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 10](#); S.I. 1998/3173, [art. 2](#)

[^{F267}754B] 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; or
 - (b) the making of a discovery assessment.
- (2) If the closure notice or, as the case may be, notice of the discovery assessment is given to any person without—
- (a) the determination, so far as it is taken into account in the closure notice or the discovery assessment, having been approved by the Board, or
 - (b) notification 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 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) A notification under subsection (2)(b) above—
- (a) must be in writing;
 - (b) must state that the Board have given their approval on the basis that—
 - (i) an amount of chargeable profits, and
 - (ii) an amount of creditable tax (which may be nil),

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- for the accounting period of the controlled foreign company in question fall to be apportioned under section 747(3) to the person in question;
- (c) must state the amounts mentioned in sub-paragraphs (i) and (ii) of paragraph (b) above; and
 - (d) subject to paragraphs (a) to (c) above, may be in such form as the Board may determine.
- (4) 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.
- (5) In this section references to a determination requiring the Board’s sanction are references (subject to subsection (6) below) to any determination of the amount of chargeable profits or creditable tax for an accounting period of a controlled foreign company which falls to be apportioned to a particular person under section 747(3).
- (6) For the purposes of this section, a determination shall be taken, in relation to a closure notice or a discovery assessment, not to be a determination requiring the Board’s sanction if—
- (a) an agreement about the relevant amounts has been made between an officer of the Board and the person in whose case it is made;
 - (b) that agreement is in force at the time of the giving of the closure notice or, as the case may be, notice of the assessment; and
 - (c) the matters to which the agreement relates include the amount determined.
- (7) In paragraph (a) of subsection (6) above, “the relevant amounts” means—
- (a) the amount of chargeable profits, and
 - (b) the amount of creditable tax (which may be nil),
- for the accounting period of the controlled foreign company in question which fall to be apportioned under section 747(3) to the person mentioned in that paragraph.
- (8) For the purposes of subsection (6) 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.
- (9) The references in subsection (8) 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—
- (a) stating that the agreement has been made; and
 - (b) setting out the terms of the agreement.

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(10) The matters that may be questioned on so much of any appeal by virtue of any provision of the Management Act or Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) 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.

(11) In this section—

“closure notice” means a notice under paragraph 32 of Schedule 18 to the Finance Act 1998 (completion of enquiry and statement of conclusions);

“discovery assessment” means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule).]

Textual Amendments

F267 S. 754B inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 11; S.I. 1998/3173, art. 2

755 Information relating to controlled foreign companies

F268

Textual Amendments

F268 S. 755 repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 12, Sch. 27 Pt. 3(27), Note; S.I. 1998/3173, art. 2

[^{F269}755A] Treatment of chargeable profits and creditable tax apportioned to company carrying on life assurance business.

(1) This section applies in any case where—

- (a) an amount (“the apportioned profit”) of a controlled foreign company’s chargeable profits for an accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom (“the UK company”);
- (b) the UK company carries on life assurance business in that one of its accounting periods (“the relevant accounting period”) in which ends the accounting period of the controlled foreign company; and
- (c) the property or rights which represent the UK company’s relevant interest in the controlled foreign company constitute to any extent assets of the UK company’s [^{F270}long-term insurance fund].

(2) Subsections (3) and (4) below apply if, in the case of the relevant accounting period, the UK company is [^{F271}charged to tax under the I minus E basis in respect of] life assurance business.

(3) Where this subsection applies, the “appropriate rate” for the purposes of section 747(4) (a) and paragraph 1 of Schedule 26 in relation to the policy holders’ part of any BLAGAB apportioned profit shall be—

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- (a) if a single rate of tax under section [F272 88(1)] of the M17 Finance Act 1989 (lower corporation tax rate on certain insurance company profits) is applicable in relation to the relevant accounting period, that rate; or
 - (b) if more than one such rate of tax is applicable in relation to the relevant accounting period, the average of those rates over the whole of that period.
- (4) Where this subsection applies, the “appropriate rate” for the purposes of section 747(4) (a) and paragraph 1 of Schedule 26 shall be nil in relation to so much of the apportioned profit as is referable to [F273 gross roll-up business carried on by the UK company.]

[In any case where—

- F274(4A) (a) paragraph 4 of Schedule 26 to this Act applies to a dividend received by the UK company, and
- (b) but for this subsection, subsection (4) of section 804B of this Act would apply to that dividend,

the amount of credit for foreign tax in respect of that dividend shall be treated, for the purposes of that section, as wholly attributable to basic life assurance and general annuity business.]

- (5) If, in the case of the relevant accounting period, the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, the “appropriate rate” for the purposes of—

- (a) section 747(4)(a), and
- (b) paragraph 1 of Schedule 26,

shall be nil in relation to so much of the apportioned profit as is referable to the UK company’s relevant interest so far as represented by assets of its [F270 long-term insurance fund].

- (6) If, in the case of the relevant accounting period,—

- (a) the UK company is [F271 charged to tax under the I minus E basis in respect of] life assurance business,
- (b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company, and
- (c) the apportioned profit is to any extent referable to [F275 gross roll-up business], so much of the creditable tax so apportioned as is attributable to the apportioned profit so far as so referable shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.

- (7) If, in the case of the relevant accounting period,—

- (a) the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, and
- (b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company,

so much of the creditable tax so apportioned as is attributable to so much of the apportioned profit as is referable to the UK company’s relevant interest so far as represented by assets of the UK company’s [F270 long-term insurance fund] shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.

- (8) Any set off under paragraph 1 F276 . . . of Schedule 26 against the UK company’s liability to tax under section 747(4)(a) in respect of the apportioned profit shall be made against

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only so much of that liability as is attributable to the eligible part of the apportioned profit.

(9) ^{F277}

(10) For the purposes of this section, the “eligible part” of the apportioned profit is any BLAGAB apportioned profit, other than the policy holders’ part.

[^{F278}(11) For the purposes of this section the policy holders' part of any BLAGAB apportioned profit is—

- (a) where subsection (11A) below applies, the whole of that profit, and
- (b) in any other case, the relevant fraction (within the meaning of subsection (11B) below) of that profit.

(11A) This subsection applies if—

- (a) the UK company’s life assurance business is mutual business,
- (b) the policy holders' share of the UK company’s relevant profits for the relevant accounting period is equal to all those profits, or
- (c) the policy holders' share of the UK company’s relevant profits for the relevant accounting period is more than its BLAGAB profits for that period.

(11B) The relevant fraction for the purposes of subsection (11)(b) above is the fraction arrived at by dividing—

- (a) the policy holders' share of the UK company’s relevant profits for the relevant accounting period, by
- (b) the UK company’s BLAGAB profits for that period.

[^{F279}(11BA) But where the BLAGAB profits for the relevant accounting period are nil, the relevant fraction—

- (a) if there are Case I profits of the accounting period in respect of its life assurance business, is nil, and
- (b) otherwise, is such fraction as is just and reasonable;

and for this purpose there are Case I profits if there are profits computed in accordance with the provisions applicable to Case I of Schedule D after making adjustments in respect of losses in accordance with section 85A(4) of the Finance Act 1989.]

(11C) In subsections (11A) and (11B) above—

- (a) references to the policy holders' share of the UK company’s share of the relevant profits are to be construed in accordance with sections 88(3) and 89 of the Finance Act 1989, ^{F280} . . .
- (b) ^{F280}

(12) In this section—

“BLAGAB apportioned profit” means so much of the apportioned profit as is referable to basic life assurance and general annuity business carried on by the UK company;

^{F281}

(13) For the purposes of this section, the part of the apportioned profit which is referable to—

- [^{F282}(a) basic life assurance and general annuity business, or
- (ba) gross roll-up business,]

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carried on by the UK company is the part which would have been so referable under section 432A had the apportioned profit been a dividend paid to the UK company at the end of the accounting period mentioned in subsection (1)(a) above in respect of the property or rights which represent the UK company's relevant interest in the controlled foreign company.

- (14) For the purposes of this section, any attribution of creditable tax to a particular part of the apportioned profit shall be made in the proportion which that part of the apportioned profit bears to the whole of the apportioned profit.]

Textual Amendments

- F269** S. 755A inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 13; S.I. 1998/3173, art. 2
- F270** Words in s. 755A(1)(c)(5)(7)(12) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), art. 52(1)(j)
- F271** Words in s. 755A(2)(6)(a) substituted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 8 para. 10 (with Sch. 8 Pt. 2)
- F272** Words in s. 755A(3) substituted (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by Finance Act 2003 (c. 14), Sch. 33 para. 13(8)
- F273** Words in s. 755A(4) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 47(2) (with Sch. 7 Pt. 2)
- F274** S. 755A(4A) inserted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Miscellaneous Amendments) Order 2006 (S.I. 2006/3270), arts. 1(1), 8(a)
- F275** Words in s. 755A(6)(c) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 47(3) (with Sch. 7 Pt. 2)
- F276** Words in s. 755A(8) omitted (31.12.2006 with effect in accordance with art. 1(2) of the repealing S.I.) by virtue of The Insurance Companies (Corporation Tax Acts) (Miscellaneous Amendments) Order 2006 (S.I. 2006/3270), arts. 1(1), 8(b)
- F277** S. 755A(9) omitted (31.12.2006 with effect in accordance with art. 1(2) of the repealing S.I.) by virtue of The Insurance Companies (Corporation Tax Acts) (Miscellaneous Amendments) Order 2006 (S.I. 2006/3270), arts. 1(1), 8(c)
- F278** S. 755A(11)-(11C) substituted for s. 755A(11) (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by Finance Act 2003 (c. 14), Sch. 33 para. 13(9)
- F279** S. 755A(11BA) inserted (with effect in accordance with Sch. 17 para. 15 of the amending Act) by Finance Act 2008 (c. 9), Sch. 17 para. 14
- F280** S. 755A(11C)(b) and preceding word omitted (with effect in accordance with Sch. 17 para. 18(6) of the repealing Act) by virtue of Finance Act 2008 (c. 9), Sch. 17 para. 18(2)
- F281** S. 755A(12): definition of "long-term insurance fund" repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 10 para. 14(2)(d), Sch. 27 Pt. 2(10), Note
- F282** S. 755A(13)(a)(ba) substituted for s. 755A(13)(a)-(d) (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 47(4) (with Sch. 7 Pt. 2)

Modifications etc. (not altering text)

- C17** S. 755A modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), regs. 1, 5, 18
- C18** S. 755A modified by the Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), reg. 30B (as inserted (13.10.1999) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1999 (S.I. 1999/2636), regs. 1, 4; and as that reg. 30B is amended by S.I. 2004/822, regs. 1, 24)

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- C19** S. 755A modified (6.4.2005) by [The Child Trust Funds \(Insurance Companies\) Regulations 2004 \(S.I. 2004/2680\)](#), [regs. 1, 4, 16](#); [S.I. 2004/3369](#), [art. 2\(1\)](#)
- C20** S. 755A modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), [regs. 1\(1\), 22](#) (as amended by [S.I. 2007/2134](#), [regs. 1\(1\)\(2\), 21](#))

Marginal Citations

M17 1989 c. 26.

[^{F283}755BA] amendment of return where general insurance business of foreign company accounted for on non-annual basis.

- (1) This section applies where—
- (a) a controlled foreign company carries on general insurance business in an accounting period;
 - (b) an amount of the company's chargeable profits, and an amount of its creditable tax (if any), for that accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom ("the UK company");
 - (c) the UK company delivers a company tax return for that one of its accounting periods in which the controlled foreign company's accounting period ends; and
 - (d) in making or amending the return, the UK company has regard to accounts of the controlled foreign company drawn up using a method falling within subsection (2) below.
- (2) The methods which fall within this subsection are—
- (a) the method described in paragraph 52 of Schedule 9A to the ^{M18}Companies Act 1985 (which provides for a technical provision to be made in the accounts which is later replaced by a provision for estimated claims outstanding); and
 - (b) any method which would have fallen within paragraph (a) above, had final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of that Schedule, taken place, and been required to take place, no later than the end of the year referred to in that sub-paragraph as the third year following the underwriting year.
- (3) Where this section applies—
- (a) the UK company may make any amendments of its company tax return arising from the replacement of the technical provision in the controlled foreign company's accounts at any time within twelve months from the date on which the provision was replaced; and
 - (b) notice of intention to enquire into the return under paragraph 24 of Schedule 18 to the Finance Act 1998 may be given at any time up to two years from that date (or at any later time in accordance with the general rule in sub-paragraph (3) of that paragraph).
- (4) If, in a case where this section applies, the accounts of the controlled foreign company are drawn up using a method falling within paragraph (b) of subsection (2) above—
- (a) the controlled foreign company, and
 - (b) any person with an interest in the controlled foreign company,

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shall be treated for the purposes of this section as if final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of Schedule 9A to the ^{M19}Companies Act 1985, had taken place at, and been required to take place no later than, the end of the year referred to in that sub-paragraph as the third year following the underwriting year.

(5) Regulations under section 755C may make provision with respect to the determination of the amount of the provision by which the technical provision is to be treated as replaced in cases falling within subsection (4) above.

[^{F284}(6) In this section “general insurance business” means business which consists of the effecting or carrying out of contracts which fall within Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.]]

Textual Amendments

F283 S. 755B inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 14; S.I. 1998/3173, art. 2

F284 S. 755B(6) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), art. 44

Marginal Citations

M18 1985 c. 6.

M19 1985 c. 6.

[^{F285}755C] **Application of Chapter where general insurance business of foreign company accounted for on non-annual basis.**

(1) The Treasury may by regulations provide for the provisions of this Chapter to have effect with prescribed modifications in any case where a non-resident company—

- carries on general insurance business; and
- draws up accounts relating to that business using a method falling within subsection (2) of section 755B.

(2) Regulations under subsection (1) above may—

- make different provision for different cases;
- make provision having effect in relation to accounting periods of non-resident companies ending not more than one year before the date on which the regulations are made; and
- contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit.

(3) In this section—

- “general insurance business” has the same meaning as in section 755B;
- “non-resident company” means a company resident outside the United Kingdom;
- “prescribed” means prescribed in regulations under this section.]

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Textual Amendments

F285 S. 755C inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 15; S.I. 1998/3173, art. 2

[^{F286}755D "Control" and the two "40 per cent" tests.

- (1) For the purposes of this Chapter "control", in relation to a company, means the power of a person to secure—
- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
 - (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,
- that the affairs of the company are conducted in accordance with his wishes.

[For the purposes of this Chapter a person also controls a company if the person ^{F287}(1A) possesses, or is entitled to acquire, such rights as would—

- (a) if the whole of the income of the company were distributed, entitle the person to receive the greater part of the amount so distributed,
 - (b) if the whole of the company's share capital were disposed of, entitle the person to receive the greater part of the proceeds of the disposal, or
 - (c) in the event of the winding-up of the company or in any other circumstances, entitle the person to receive the greater part of the assets of the company which would then be available for distribution.]
- (2) Where two or more persons, taken together, have the power mentioned in subsection (1) above [^{F288}or satisfy subsection (1A) above], they shall be taken for the purposes of this Chapter to control the company.
- (3) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.
- (4) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing—
- (a) at least 40 per cent, but
 - (b) not more than 55 per cent,
- of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.
- (5) For the purposes of this Chapter any question—
- (a) whether a company is controlled by a person, or by two or more persons taken together, or
 - (b) whether, in the case of any company, the applicable 40 per cent test is satisfied in the case of each of two persons who, taken together, control the company,
- shall be determined after attributing to each of the persons all the rights and powers mentioned in subsection (6) below that are not already attributed to that person for the purposes of subsections (1) to (4) above.

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- (6) The rights and powers referred to in subsection (5) above are—
- (a) rights and powers which the person is entitled to acquire at a future date or which he will, at a future date, become entitled to acquire;
 - (b) rights and powers of other persons, to the extent that they are rights or powers falling within subsection (7) below;
 - (c) if the person is resident in the United Kingdom, rights and powers of any person who is resident in the United Kingdom and connected with the person; and
 - (d) if the person is resident in the United Kingdom, rights and powers which for the purposes of subsection (5) above would be attributed to a person who is resident in the United Kingdom and connected with the person (a “UK connected person”) if the UK connected person were himself the person.
- (7) Rights and powers fall within this subsection to the extent that they—
- (a) are required, or may be required, to be exercised in any one or more of the following ways, that is to say—
 - (i) on behalf of the person;
 - (ii) under the direction of the person; or
 - (iii) for the benefit of the person; and
 - (b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.
- (8) In subsections (6)(b) to (d) and (7) above, the references to a person’s rights and powers include references to any rights or powers which he either—
- (a) is entitled to acquire at a future date, or
 - (b) will, at a future date, become entitled to acquire.
- (9) In paragraph (d) of subsection (6) above, the reference to rights and powers which would be attributed to a UK connected person if he were the person includes a reference to rights and powers which, by applying that paragraph wherever one person resident in the United Kingdom is connected with another person, would be so attributed to him through a number of persons each of whom is resident in the United Kingdom and connected with at least one of the others.
- (10) In determining for the purposes of this section whether one person is connected with another in relation to a company, subsection (7) of section 839 shall be disregarded.
- (11) References in this section—
- (a) to rights and powers of a person, or
 - (b) to rights and powers which a person is or will become entitled to acquire,
- include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.]

Textual Amendments

F286 S. 755D inserted (with effect in accordance with Sch. 31 para. 9(3) of the amending Act) by Finance Act 2000 (c. 17), Sch. 31 para. 4(1)

F287 S. 755D(1A) inserted (with effect in accordance with s. 64(7)(9)-(11) of the amending Act) by Finance Act 2008 (c. 9), s. 64(3)(a)

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.

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F288 Words in s. 755D(2) inserted (with effect in accordance with s. 64(7)(9)-(11) of the amending Act) by Finance Act 2008 (c. 9), s. 64(3)(b)

Modifications etc. (not altering text)

C21 S. 755D applied (with modifications) by Corporation Tax Act 2009 (c. 4), s. 931E(4)(5) (as inserted (with effect in accordance with Sch. 14 para. 31 of the amending Act) by Finance Act 2009 (c. 10), Sch. 14 para. 1)

C22 S. 755D applied (with modifications) by Corporation Tax Act 2009 (c. 4), s. 486E(10) (as inserted (with effect in accordance with Sch. 24 paras. 11, 13-16 of the amending Act) by Finance Act 2009 (c. 10), Sch. 24 para. 3)

756 Interpretation and construction of Chapter IV.

^{M20}(1) In this Chapter—

[^{F289}“company tax return” means a return required to be made under Schedule 18 to the Finance Act 1998;]

“trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades.

[^{F290}(1A) In this Chapter “EEA territory”, in relation to any time, means a territory which is an EEA state at that time other than the United Kingdom.

(1B) But a territory is not to be regarded for the purposes of subsection (1A) above as an EEA state at any time if—

- (a) it is not a member State at that time, and
- (b) there are no arrangements made in relation to the territory having effect by virtue of section 173 of the Finance Act 2006 (international tax enforcement arrangements) at that time.]

(2) For the purposes of this Chapter—

- (a) section 839 applies; and
- (b) subsection (10) of section 783 applies as it applies for the purposes of that section.

(3) The following provisions of Part XI apply for the purposes of this Chapter as they apply for the purposes of that Part—

- (a) ^{F291}
- (b) section 417(7) to (9);

^{F292}

Textual Amendments

F289 S. 756(1): definition of “company tax return” inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 16; S.I. 1998/3173, art. 2

F290 S. 756(1A)(1B) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), Sch. 15 para. 6

F291 S. 756(3)(a) repealed (with effect in accordance with Sch. 31 para. 9(3) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 31 para. 4(2)(a), Sch. 40 Pt. 2(14), Note

F292 Words in s. 756(3) repealed (with effect in accordance with Sch. 31 para. 9(3) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 31 para. 4(2)(b), Sch. 40 Pt. 2(14), Note

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Marginal Citations

M20 Source—1984 s.91

CHAPTER V

OFFSHORE FUNDS

^{F293}Meaning of offshore fund

Textual Amendments

F293 Ss. 756A-756C and preceding cross-headings inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 26 para. 3 (with Sch. 26 para. 17)

756A General definition of offshore fund

- (1) In this Chapter references to an offshore fund are to a collective investment scheme constituted by—
- (a) a company that is resident outside the United Kingdom, or
 - (b) a unit trust scheme the trustees of which are not resident in the United Kingdom, or
 - (c) arrangements not falling within paragraph (a) or (b) taking effect by virtue of the law of a territory outside the United Kingdom and which under that law create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of any part of the United Kingdom).
- (2) Subsection (1) has effect subject to—
- section 756B (treatment of umbrella funds), and
 - section 756C (treatment of funds comprising more than one class of interest).
- ^{F294}(3) In this section “collective investment scheme” means any arrangements which are a collective investment scheme for the purposes of Part 17 of the Financial Services and Markets Act 2000 (see section 235 of that Act and orders made under subsection (5) of that section) or would be if the words “, within a period appearing to him to be reasonable,” were omitted from section 236(3)(a) of that Act.
- (4) But the reference to offshore funds in section 760(3)(a) does not include any arrangements which are not a collective investment scheme for the purposes of that Part of that Act.]

Textual Amendments

F294 S. 756A(3)(4) substituted for s. 756A(3) (19.7.2007) by Finance Act 2007 (c. 11), s. 57(2)

Modifications etc. (not altering text)

C23 Ss. 756A-756C applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), s. 489 (with Sch. 2 Pts. 1, 2)

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.

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Treatment of umbrella funds

756B Treatment of umbrella funds

- (1) In this Chapter, an “umbrella fund” means an offshore fund—
- (a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them; and
 - (b) under which the participants are entitled to exchange rights in one pool for rights in another;
- and references in this Chapter to a part of an umbrella fund are to such of the arrangements as relate to a separate pool.
- (2) For the purposes of this Chapter (except subsection (1))—
- (a) each part of an umbrella fund shall be regarded as a separate offshore fund, and
 - (b) the umbrella fund as a whole shall not be regarded as an offshore fund.
- (3) In this Chapter, in relation to a part of an umbrella fund—
- (a) a reference to the assets of an offshore fund is to such of the assets of the umbrella fund as under the arrangements form part of the separate pool to which that part of the umbrella fund relates;
 - (b) a reference to the income of an offshore fund is to the income arising from those assets;
 - (c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest in that separate pool; and
 - (d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the umbrella fund being a non-qualifying fund.

Modifications etc. (not altering text)

C24 Ss. 756A-756C applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), s. 489 (with Sch. 2 Pts. 1, 2)

Treatment of funds comprising more than one class of interest

756C Treatment of funds comprising more than one class of interest

- (1) For the purposes of this Chapter where there is more than one class of interest in an offshore fund (the “main fund”)—
- (a) each class of interest shall be regarded as a separate offshore fund, and
 - (b) the main fund shall not be regarded as an offshore fund.
- (2) In this section, references to a class of interest in an offshore fund do not include—
- (a) a part of an umbrella fund which is regarded as an offshore fund by virtue of section 756B, or
 - (b) a class of interest in an offshore fund which by virtue of section 759(5), (6) or (8) is not a material interest in the fund.
- (3) In this Chapter, in relation to a class of interest in an offshore fund—

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, PART XVII is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) a reference to the assets of an offshore fund is to the assets of the main fund;
- (b) a reference to the income of an offshore fund is to such of the income of the main fund as is attributable to interests of that class under the arrangements constituting the main fund;
- (c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest of that class; and
- (d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the main fund being a non-qualifying fund.]

Modifications etc. (not altering text)

C25 Ss. 756A-756C applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), s. 489 (with Sch. 2 Pts. 1, 2)

Material interests in non-qualifying offshore funds

757 Disposal of material interests in non-qualifying offshore funds

^{M21}(1) This Chapter applies to a disposal by any person of an asset if—

- (a) at the time of the disposal, the asset constitutes a material interest in an offshore fund which is or has at any material time been a non-qualifying offshore fund; or
- (b) at the time of the disposal, the asset constitutes an interest in a company resident in the United Kingdom or in a unit trust scheme, the trustees of which are at that time resident in the United Kingdom and at a material time after 31st December 1984 [^{F295}the interest was a material interest in a non-qualifying offshore fund];

and for the purpose of determining whether the asset disposed of falls within paragraph (b) above, section [^{F296}127 of the 1992] Act (equation of original shares and new holding) shall have effect as it has effect for the purposes of that Act.

[^{F297}(1A) But this Chapter does not apply to disposals of assets of an insurance company's long-term insurance fund.]

(2) ^{M22}Subject to the following provisions of this section and section 758, there is a disposal of an asset for the purposes of this Chapter if there would be such a disposal for the purposes of the [^{F296}1992] Act.

(3) Notwithstanding anything in paragraph (b) of subsection (1) of section [^{F296}62 of the 1992] Act (general provisions applicable on death: no deemed disposal by the deceased) where a person dies and the assets of which he was competent to dispose include an asset which is or has at any time been a material interest in a non-qualifying offshore fund, then, for the purposes of this Chapter, other than section 758—

- (a) immediately before the acquisition referred to in paragraph (a) of that subsection, that interest shall be deemed to be disposed of by the deceased for such a consideration as is mentioned in that subsection; but
- (b) nothing in this subsection affects the determination, in accordance with subsection (1) above, of the question whether that deemed disposal is one to which this Chapter applies.

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, PART XVII is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) Subject to subsection (3) above, section [F296]62 of the 1992] Act applies for the purposes of this Chapter as it applies for the purposes of that Act, and the reference in that subsection to the assets of which a deceased person was competent to dispose shall be construed in accordance with subsection (10) of that section.
- [F298] (5) Section 135 of the 1992 Act (exchange of securities for those in another company treated as not involving a disposal) does not apply for the purposes of this Chapter [F299] to the extent that—
- (a) the interest in the entity that is company A for the purposes of that section that is exchanged is or was at a material time an interest in a non-qualifying offshore fund, and
 - (b) the interest in the entity that is company B for those purposes that is exchanged is not an interest in such a fund.]

In a case where that section would apply apart from this subsection, the exchange in question [F300] (of interests in or of an entity that are or were at a material time interests in a non-qualifying offshore fund)] shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the exchange.

- (6) Section 136 of the 1992 Act (scheme of reconstruction involving issue of securities treated as exchange not involving disposal) does not apply for the purposes of this Chapter [F301] to the extent that—
- (a) the interest in the entity that is company A for the purposes of that section that is exchanged is or was at a material time an interest in a non-qualifying offshore fund, and
 - (b) the interest in the entity that is company B for those purposes that is exchanged is not an interest in such a fund.]

In a case where that section would apply apart from this subsection, the deemed exchange in question [F302] (of interests in or of an entity that are or were at a material time interests in a non-qualifying offshore fund)] shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the deemed exchange.]

- (7) For the purposes of this section—
- (a) a material time, in relation to the disposal of an asset, is [F303] any time on or after] the earliest date on which any relevant consideration was given for the acquisition of the asset or, if that date is earlier than 1st January 1984, any time on or after 1st January 1984; and
 - (b) “relevant consideration” means consideration which, assuming the application to the disposal of [F296] Chapter III of Part II of the 1992] Act, would fall to be taken into account in determining the amount of the gain or loss accruing on the disposal, whether that consideration was given by or on behalf of the person making the disposal or by or on behalf of a predecessor in title of his whose acquisition cost represents, directly or indirectly, the whole or any part of the acquisition cost of the person making the disposal.

Textual Amendments

F295 Words in s. 757(1)(b) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 26 para. 4(2)

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, PART XVII is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F296** Words in s. 757(1)-(7) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(43)** (with ss. 60, 101(1), 171, 201(3))
- F297** S. 757(1A) inserted (with effect in accordance with Sch. 17 para. 30(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 17 para. 30(1)**
- F298** S. 757(5)(6) substituted (with effect in accordance with Sch. 9 paras. 7, 8(1) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(5)**
- F299** Words in s. 757(5) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 4(3)(a)**
- F300** Words in s. 757(5) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 4(3)(b)**
- F301** Words in s. 757(6) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 4(4)(a)**
- F302** Words in s. 757(6) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 4(4)(b)**
- F303** 1990 s.89 and Sch.14 para.10 (*correction of errors*)—*deemed always to have had effect.*

Modifications etc. (not altering text)

- C26** S. 757 modified (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 10 para. 7** (with Sch. 10 para. 10); S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4 (as amended by S.I. 2003/333, **art. 14**))

Marginal Citations

- M21** Source—1984 s.92(1), (7)
M22 Source—1984 s.92(2)-(6), (8)

758 Offshore funds operating equalisation arrangements

- ^{M23}(1) For the purposes of this Chapter, an offshore fund operates equalisation arrangements if, and at a time when, arrangements are in existence which have the result that where—
- a person acquires by way of initial purchase a material interest in the fund at some time during a period relevant to the arrangements; and
 - the fund makes a distribution for a period which begins before the date of his acquisition of that interest;
- the amount of that distribution which is paid to him (assuming him still to retain that interest) will include a payment of capital which is debited to an account maintained under the arrangements (“the equalisation account”) and which is determined by reference to the income which had accrued to the fund at the date of his acquisition.
- (2) For the purposes of this section, a person acquires an interest in an offshore fund by way of initial purchase if—
- his acquisition is by way of subscription for or allotment of new shares, units or other interests issued or created by the fund; or
 - his acquisition is by way of direct purchase from the persons concerned with the management of the fund and their sale to him is made in their capacity as managers of the fund.
- (3) Without prejudice to section 757(1), this Chapter applies, subject to the following provisions of this section, to a disposal by any person of an asset if—
- at the time of the disposal, the asset constitutes a material interest in an offshore fund which at that time is operating equalisation arrangements; and

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- (b) the fund is not and has not at any material time (within the meaning of section 757(7)) been a non-qualifying offshore fund; and
 - (c) the proceeds of the disposal do not fall to be taken into account as a trading receipt.
- (4) This Chapter does not, by virtue of subsection (3) above, apply to a disposal if—
- (a) it takes place during such a period as is mentioned in subsection (1)(a) above; and
 - (b) throughout so much of that period as precedes the disposal, the income of the offshore fund concerned has been of such a nature as is referred to in paragraph 3(1) of Schedule 27.
- (5) An event which, apart from section [F304]127 of the 1992] Act (reorganisations etc.), would constitute a disposal of an asset shall constitute such a disposal for the purpose of determining whether, by virtue of subsection (3) above, there is a disposal to which this Chapter applies.
- (6) The reference in subsection (5) above to section [F304]127 of the 1992] Act includes a reference to that section as applied by [F305]any provision of Chapter 2 of Part 4 of that Act].
- [F306](7) The Treasury may make provision by regulations as to the application of the provisions of this section in relation to—
- (a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or
 - (b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.
- (8) Regulations under subsection (7) may—
- (a) make different provision for different cases, and
 - (b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.]

Textual Amendments

F304 Words in s. 758(5)(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(44)** (with ss. 60, 101(1), 171, 201(3))

F305 Words in s. 758(6) substituted (with effect in accordance with Sch. 9 paras. 7, 8(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(6)**

F306 S. 758(7)(8) inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 5**

Modifications etc. (not altering text)

C27 S. 758 applied (with modifications) (22.10.2004 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Offshore Funds Regulations 2004 (S.I. 2004/2572), **regs. 1(1), 3**

Marginal Citations

M23 Source—1984 s.93

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.
Changes to legislation: Income and Corporation Taxes Act 1988, PART XVII is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

759 Material interests in offshore funds

^{M24}(1) ^{F307}

[^{F308}(1A) ^{F307}

- (2) Subject to the following provisions of this section, a person's interest in [^{F309}an offshore fund] is a material interest if, at the time when he acquired the interest, it could reasonably be expected that, at some time during the period of seven years beginning at the time of his acquisition, he would be able to realise the value of the interest (whether by transfer, surrender or in any other manner).
- (3) For the purposes of subsection (2) above, a person is at any time able to realise the value of an interest if at that time he can realise an amount which is reasonably approximate to that portion which the interest represents (directly or indirectly) of the market value at that time of [^{F310}the assets of the fund].
- (4) For the purposes of subsections (2) and (3) above—
- (a) a person is able to realise a particular amount if he is able to obtain that amount either in money or in the form of assets to the value of that amount; and
 - (b) if at any time an interest in an offshore fund has a market value which is substantially greater than the portion which the interest represents, as mentioned in subsection (3) above, of the market value at that time of the assets concerned, the ability to realise such a market value of the interest shall not be regarded as an ability to realise such an amount as is referred to in that subsection.
- (5) An interest in [^{F311}an offshore fund] is not a material interest if—
- (a) it is an interest in respect of any loan capital or debt issued or incurred for money which, in the ordinary course of a business of banking, is lent by a person carrying on that business; or
 - (b) it is a right arising under a policy of insurance.
- (6) Shares in a company [^{F312}that is not resident in the United Kingdom](an “overseas company”) do not constitute a material interest [^{F313}in an offshore fund] if—
- (a) the shares are held by a company and the holding of them is necessary or desirable for the maintenance and development of a trade carried on by the company or a company associated with it; and
 - (b) the shares confer at least 10 per cent. of the total voting rights in the overseas company and a right, in the event of a winding-up, to at least 10 per cent. of the assets of that company remaining after the discharge of all liabilities having priority over the shares; and
 - (c) not more than ten persons hold shares in the overseas company and all the shares in that company confer both voting rights and a right to participate in the assets on a winding-up; and
 - (d) at the time of its acquisition of the shares, the company had such a reasonable expectation as is referred to in subsection (2) above by reason only of the existence of—
 - (i) an arrangement under which, at some time within the period of seven years beginning at the time of acquisition, that company may require the other participators to purchase its shares; or
 - (ii) provisions of either an agreement between the participators or the constitution of the overseas company under which the company will

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be wound up within a period which is, or is reasonably expected to be, shorter than the period referred to in subsection (2) above; or

(iii) both such an arrangement and such provisions;

and in this paragraph “participators” means the persons holding shares falling within paragraph (c) above.

- (7) For the purposes of subsection (6)(a) above, a company is associated with another company if one of them has control of the other within the meaning of section 416 or both of them are under the control, within the meaning of that section, of the same person or persons.
- (8) An interest in a company [^{F312}that is not resident in the United Kingdom] is not a material interest [^{F313}in an offshore fund] at any time when the following conditions are satisfied, namely—
- (a) that the holder of the interest has the right to have the company wound up; and
 - (b) that, in the event of a winding up, the holder is, by virtue of the interest and any other interest which he then holds in the same capacity, entitled to more than 50 per cent. of the assets remaining after the discharge of all liabilities having priority over the interest or interests concerned.
- (9) The market value of any asset for the purposes of this Chapter shall be determined in like manner as it would be determined for the purposes of the [^{F314}1992] Act except that, in the case of an interest in an offshore fund for which there are separate published buying and selling prices, section [^{F314}272(5)] of that Act (meaning of “market value” in relation to rights of unit holders in a unit trust scheme) shall apply with any necessary modifications for determining the market value of the interest for the purposes of this Chapter.

Textual Amendments

- F307** S. 759(1)(1A) repealed (with effect in accordance with s. 145(2) of the repealing Act) by [Finance Act 2004 \(c. 12\), Sch. 26 para. 6\(2\), Sch. 42 Pt. 2\(18\)](#), Note 1 (with Sch. 26 para. 17)
- F308** S. 759(1A) inserted (with application in accordance with s. 134(8) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 134\(3\)](#)
- F309** Words in s. 759(2) substituted (with effect in accordance with s. 145(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 26 para. 6\(3\)](#) (with Sch. 26 para. 17)
- F310** Words in s. 759(3) substituted (with effect in accordance with s. 145(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 26 para. 6\(4\)](#) (with Sch. 26 para. 17)
- F311** Words in s. 759(5) substituted (with effect in accordance with s. 145(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 26 para. 6\(5\)](#) (with Sch. 26 para. 17)
- F312** Words in s. 759(6)(8) substituted (with effect in accordance with s. 145(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 26 para. 6\(6\)\(a\)](#) (with Sch. 26 para. 17)
- F313** Words in s. 759(6)(8) inserted (with effect in accordance with s. 145(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 26 para. 6\(6\)\(b\)](#) (with Sch. 26 para. 17)
- F314** Words in s. 759(9) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\), ss. 289, 290, Sch. 10 para. 14\(45\)](#) (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

- M24** Source—1984 s.94

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.

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760 Non-qualifying offshore funds

^{M25}(1) For the purposes of this Chapter, an offshore fund is a non-qualifying fund except during an account period of the fund in respect of which the fund is certified by the Board as a distributing fund.

(2) An offshore fund shall not be certified as a distributing fund in respect of any account period unless, with respect to that period, the fund pursues a full distribution policy, within the meaning of Part I of Schedule 27.

(3) Subject to Part II of that Schedule, an offshore fund shall not be certified as a distributing fund in respect of any account period if, at any time in that period—

(a) more than 5 per cent. by value of the assets of the fund consists of interests in other offshore funds; ^{F315} . . .

(b) ^{F315}

(c) ^{F315}

(d) ^{F315}

(4) ^{F316}

(5) ^{F316}

(6) ^{F316}

(7) ^{F316}

(8) For the purposes of this Chapter, an account period of an offshore fund shall begin—

(a) whenever the fund begins to carry on its activities; and

(b) whenever an account period of the fund ends without the fund then ceasing to carry on its activities.

(9) For the purposes of this Chapter, an account period of an offshore fund shall end on the first occurrence of any of the following—

(a) the expiration of 12 months from the beginning of the period;

(b) an accounting date of the fund or, if there is a period for which the fund does not make up accounts, the end of that period; and

(c) the fund ceasing to carry on its activities.

(10) For the purposes of this Chapter—

(a) an account period of an offshore fund which is a company [^{F317}that is not resident in the United Kingdom] shall end if, and at the time when, the company ceases to be resident outside the United Kingdom; and

(b) an account period of an offshore fund which is a unit trust scheme [^{F318}of which the trustees are not resident in the United Kingdom] shall end if, and at the time when, the trustees of the scheme become resident in the United Kingdom.

[^{F319}(10A) For the purposes of this Chapter, in relation to—

(a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or

(b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C,

references to an account period of the offshore fund are to an account period of the umbrella fund or the main fund (as the case may be).]

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.

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- (11) The provisions of Part III of Schedule 27 shall have effect with respect to the procedure for and in connection with the certification of an offshore fund as a distributing fund, and the supplementary provisions in Part IV of that Schedule shall have effect.

Textual Amendments

- F315** S. 760(3)(b)-(d) and preceding word repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 26 para. 13(2), Sch. 42 Pt. 2(18), Note 1 (with Sch. 26 para. 17)
- F316** S. 760(4)-(7) repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 26 para. 13(3), Sch. 42 Pt. 2(18), Note 1 (with Sch. 26 para. 17)
- F317** Words in s. 760(10)(a) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 26 para. 7(2)(a) (with Sch. 26 para. 17)
- F318** Words in s. 760(10)(b) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 26 para. 7(2)(b) (with Sch. 26 para. 17)
- F319** S. 760(10A) inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 26 para. 7(3) (with Sch. 26 para. 17)

Modifications etc. (not altering text)

- C28** S. 760 modified (22.7.2004) by Finance Act 2004 (c. 12), Sch. 26 para. 17

Marginal Citations

- M25** Source—1984 s.95

Charge to tax of offshore income gains

761 Charge to income tax or corporation tax of offshore income gain.

^{M26}(1) If a disposal to which this Chapter applies gives rise in accordance with section 758 [^{F320}or Schedule] 28 to an offshore income gain, then, subject to the provisions of this section, the amount [^{F321}of that gain—

- (a) shall be treated for all the purposes of the Tax Acts as income arising at the time of the disposal to the person making the disposal, and
- (b) shall be charged—
 - (i) to income tax for the year of assessment in which the disposal is made, or
 - (ii) to corporation tax as a profit or gain under Case VI of Schedule D for the accounting period in which the disposal is made.]

[^{F322}(1A) The income tax charged by virtue of subsection (1)(b)(i) above shall be charged on the full amount of the income treated as arising in the year of assessment.]

(2) Subject to subsection (3) below, [^{F323}sections 2(1), 10 and 10B][^{F324}of the 1992 Act] (persons chargeable to tax in respect of chargeable gains) and [^{F325}section 11(2A)(c)] shall have effect in relation to income tax or corporation tax in respect of offshore income gains as they have effect in relation to capital gains tax or corporation tax in respect of chargeable gains.

(3) In the application of [^{F326}sections 10 and 10B][^{F324}of the 1992 Act] in accordance with subsection (2) above, paragraphs (a) and (b) of [^{F327}subsection (1) of section 10] (which define the assets on the disposal of which chargeable gains are taxable) shall have

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effect with the omission of the words “situated in the United Kingdom and”^{F328} and paragraphs (a) and (b) of subsection (1) of section 10B (which make similar provision in relation to corporation tax) shall have effect with the omission of the words “situated in the United Kingdom and”].

^{F329}(4)

^{F330}(5) Subsections (1)(b) and (1A) are subject to section 762ZB (income treated as arising: non-UK domiciled individuals to whom remittance basis applies).]

(6) A ^{F331}[charitable company] shall be exempt from ^{F332}[corporation tax] in respect of an offshore income gain if the gain is applicable and applied for charitable purposes
^{F333}

^{F334}(6A) See section 535 of ITA 2007 for an exemption for income tax purposes for offshore income gains accruing to a charitable trust.

(6B) If property held on charitable trusts ceases to be subject to charitable trusts and that property represents directly or indirectly an offshore income gain, the trustees shall be treated as if they had disposed of and immediately reacquired that property for a consideration equal to its market value, any gain (calculated in accordance with Schedule 28) accruing being treated as an offshore income gain not accruing to a charity.

(6C) In this section “charity” and “charitable company” have the same meaning as in section 506 and “market value” has the same meaning as in the 1992 Act.]

(7) In any case where—

(a) a disposal to which this Chapter applies is a disposal of settled property, within the meaning of the ^{F324}[1992] Act, and

^{F335}(b) at the time of the disposal referred to in paragraph (a) above the trustees of the settlement are neither resident nor ordinarily resident in the United Kingdom for the purposes of the 1992 Act,]

subsection (1) above shall not apply in relation to any offshore income gain to which the disposal gives rise.

^{F336}(8) Nothing in subsection (7) affects the application of this section in relation to an offshore income gain treated as arising by virtue of section 762(3).]

Textual Amendments

F320 1990 s.89 and Sch.14 para.11 (*correction of errors*)—*deemed always to have had effect. Previously “and Schedule.”*

F321 Words in s. 761(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5)*, **Sch. 1 para. 308(2)** (with Sch. 2)

F322 S. 761(1A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5)*, **Sch. 1 para. 308(3)** (with Sch. 2)

F323 Words in s. 761(2) substituted (20.7.2005) by *Finance (No. 2) Act 2005 (c. 22)*, s. **23(1)(a)(i)**

F324 Words in s. 761(2)(3)(5)(6)(7)(a)(b) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by *Taxation of Chargeable Gains Act 1992 (c. 12)*, ss. 289, 290, **Sch. 10 para. 14(47)** (with ss. 60, 101(1), 171, 201(3))

F325 Words in s. 761(2) substituted (20.7.2005) by *Finance (No. 2) Act 2005 (c. 22)*, s. **23(1)(a)(ii)**

F326 Words in s. 761(3) substituted (20.7.2005) by *Finance (No. 2) Act 2005 (c. 22)*, s. **23(1)(b)(i)**

F327 Words in s. 761(3) substituted (20.7.2005) by *Finance (No. 2) Act 2005 (c. 22)*, s. **23(1)(b)(ii)**

F328 Words in s. 761(3) substituted (20.7.2005) by *Finance (No. 2) Act 2005 (c. 22)*, s. **23(1)(b)(iii)**

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- F329** S. 761(4) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)
- F330** S. 761(5) substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 92(2)**
- F331** Words in s. 761(6) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 179(2)(a)** (with Sch. 2)
- F332** Words in s. 761(6) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 179(2)(b)** (with Sch. 2)
- F333** Words in s. 761(6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 179(2)(c), **Sch. 3 Pt. 1** (with Sch. 2)
- F334** S. 761(6A)-(6C) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 179(3)** (with Sch. 2)
- F335** S. 761(7)(b) substituted (with effect in accordance with Sch. 12 para. 47(2) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 para. 47(1)**
- F336** S. 761(8) inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 92(3)**

Marginal Citations

M26 Source—1984 s.96; 1987 Sch.15 16(1)

762 Offshore income gains accruing to persons resident or domiciled abroad.

^{M27}(1) Section [^{F337}13 of the 1992 Act] (chargeable gains accruing to certain non-resident companies) shall have effect in relation to offshore income gains subject to the following modifications—

(a) for any reference to a chargeable gain there shall be substituted a reference to an offshore income gain;

[^{F338}(aa) any reference to anything accruing is to be read as a reference to it arising (and similar references are to be read accordingly);]

(b) for the reference in subsection (7) to capital gains tax there shall be substituted a reference to income tax or corporation tax; and

(c) paragraphs (b) and (c) of subsection (5) and subsection (8) shall be omitted.

[^{F339}(2) If—

(a) offshore income gains arise to the trustees of a settlement in a tax year, and

(b) section 87 of the 1992 Act (gains of non-resident settlements) applies to the settlement for that year,

the OIG amount for the settlement for that year is the amount of the offshore income gains.

(3) Sections 87, 87A, 87C to 90 and 96 to 98 of, and Schedule 4C to, the 1992 Act apply in relation to OIG amounts as if—

(a) references to section 2(2) amounts (except those in paragraph 7B(2)(b) and (4) of Schedule 4C) were to OIG amounts,

(b) references to chargeable gains (except the one in paragraph 1(5) of Schedule 4C) were to offshore income gains,

(c) references to anything accruing were to it arising (and similar references, except the one in paragraph 1(5) of Schedule 4C, were read accordingly), and

(d) sections 87(4), 88(2) to (5), 89(4) and 97(6) and paragraphs 1(3A), 3 to 7, 8AA, 12 and 13 of Schedule 4C were omitted.

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- (4) Section 87A of the 1992 Act applies for a tax year by virtue of subsection (3) before it applies for that year otherwise than by virtue of that subsection.
- (5) If, by virtue of subsection (1) or (3), offshore income gains are treated as arising to a person, for the purposes of section 761 as it applies in relation to the offshore income gains treat the person as having made the disposal in question.]
- (6) To the extent that an offshore income gain is treated, by virtue of subsection (1) or [F340(3)], as having [F341arisen] to any person resident or ordinarily resident in the United Kingdom, that gain shall not be deemed to be the income of any individual for the purposes of F342. . . any provision of [F343Chapter 5 of Part 5 of ITTOIA 2005].

Textual Amendments

- F337** Words in s. 762(1)-(4) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(48)** (with ss. 60, 101(1), 171, 201(3))
- F338** S. 762(1)(aa) inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 93(2)**
- F339** S. 762(2)-(5) substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 93(3)**
- F340** Word in s. 762(6) substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 93(4)(a)**
- F341** Word in s. 762(6) substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 93(4)(b)**
- F342** Words in s. 762(6) omitted (with effect in accordance with Sch. 7 para. 98 of the repealing Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 93(4)(c)**
- F343** Words in s. 762(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 309(b)** (with Sch. 2)

Marginal Citations

M27 Source—1984 s.97

[F344] **762ZA Offshore income gains: application of transfer of assets abroad provisions**

- (1) Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) applies in relation to an offshore income gain arising to a person resident or domiciled outside the United Kingdom as if the offshore income gain were income becoming payable to the person.
- (2) Income treated as arising under that Chapter by virtue of subsection (1) is regarded as “foreign” for the purposes of section 726, 730 or 735 of that Act.
- (3) Subsection (1) does not apply in relation to an offshore income gain if (and to the extent that) it is treated, by virtue of section 762(1), as arising to a person resident or ordinarily resident in the United Kingdom.
- (4) The following provisions apply if section 762(2) applies in relation to an offshore income gain (“the relevant offshore income gain”).
- (5) If—
 - (a) by virtue of section 762(3) an offshore income gain is treated as arising in a tax year to a person resident or ordinarily resident in the United Kingdom, and
 - (b) it is so treated by reason of the relevant offshore income gain (or part of it),

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for that and subsequent tax years subsection (1) does not apply in relation to the relevant offshore income gain (or that part).

- (6) If, by virtue of subsection (1) as it applies in relation to the relevant offshore income gain, income is treated under Chapter 2 of Part 13 of ITA 2007 as arising in a tax year, reduce (with effect from the following tax year) the OIG amount in question by the amount of the income.]

Textual Amendments

F344 Ss. 762ZA, 762ZB inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), Sch. 7 para. 94

[^{F344}762ZB] Income treated as arising under section 761(1): remittance basis

- (1) This section applies to income treated as arising under section 761(1) to an individual in a tax year if—
- (a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year, and
 - (b) the individual is not domiciled in the United Kingdom in that year.
- (2) Treat the income as relevant foreign income of the individual.
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis)—
- (a) treat any consideration obtained on the disposal of the asset as deriving from the income, and
 - (b) unless the consideration so obtained is of an amount equal to the market value of the asset, treat the asset as deriving from the income.
- (4) In subsection (3)—
- (a) “the asset” means the asset the disposal of which causes the income to be treated as arising, and
 - (b) “the disposal” means the disposal mentioned in paragraph (a).]

Textual Amendments

F344 Ss. 762ZA, 762ZB inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), Sch. 7 para. 94

[^{F345}762AE] Exchange of interests of different classes

- (1) This section applies where—
- (a) classes of interest in an offshore fund (the “main fund”) are treated as separate offshore funds under section 756C; and
 - (b) as the result of—
 - (i) a reorganisation within the meaning of section 126 of the 1992 Act, or
 - (ii) a conversion of securities within the meaning of section 132 of that Act,
 a person exchanges an interest of one class (A) in the main fund for an interest of another class (B) in that fund.

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- (2) Where—
- (a) the interest of class A—
 - (i) is at the time of the exchange an interest in a non-qualifying offshore fund, or
 - (ii) has been an interest in such a fund at any material time, and
 - (b) the interest of class B is at the time of the exchange an interest in a fund which is certified by the Board as a distributing offshore fund,
- section 127 of the 1992 Act (equation of original shares and new holding) shall not prevent the exchange constituting a disposal for the purposes of this Chapter.
- (3) Any such disposal shall be treated as a disposal for a consideration equal to the market value of the rights at the time of the exchange.
- (4) In this section—
- “class of interest” has the same meaning as in section 756C(1);
 - “material time” has the same meaning as in section 757.]

Textual Amendments

F345 S. 762A inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 26 para. 15(1) (with Sch. 26 para. 17)

763 Deduction of offshore income gain in determining capital gain.

- ^{M28}(1) The provisions of this section apply where a disposal to which this Chapter applies gives rise to an offshore income gain; and, if that disposal also constitutes the disposal of the interest concerned for the purposes of the [F3461992] Act, then that disposal is in the following provisions of this section referred to as [F346the 1992 Act disposal].
- (2) So far as relates to an offshore income gain which arises on a material disposal (within the meaning of Part I of Schedule 28), subsections (3) and (4) below shall have effect in relation to [F346the 1992 Act disposal] in substitution for section [F34637(1)] of that Act (deduction of consideration chargeable to tax on income).
- (3) Subject to the following provisions of this section, in the [F346computation of the gain] accruing on [F346the 1992 Act disposal], a sum equal to the offshore income gain shall be deducted from the sum which would otherwise constitute the amount or value of the consideration for the disposal.
- (4) Where [F346the 1992 Act disposal] is of such a nature that, by virtue of section [F34642] of that Act (part disposals) an apportionment falls to be made of certain expenditure, no deduction shall be made by virtue of subsection (3) above in determining, for the purposes of the fraction in subsection (2) of that section, the amount or value of the consideration for the disposal.
- (5) If [F346the 1992 Act disposal] forms part of a transfer to which section [F346162] of that Act applies (roll-over relief on transfer of business in exchange wholly or partly for shares) then, for the purposes of subsection (4) of that section (determination of the amount of the deduction from the gain on the old assets) “B” in the fraction in that subsection (the value of the whole of the consideration received by the transferor in exchange for the business) shall be taken to be what it would be if the value of the

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consideration other than shares so received by the transferor were reduced by a sum equal to the offshore income gain.

- (6) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of [^{F347}section 757(5) or (6)] or 758(5), the [^{F346}1992] Act shall have effect as if an amount equal to the offshore income gain to which the disposal gives rise were given (by the person making the exchange concerned) as consideration for the new holding, within the meaning of section [^{F346}128] of that Act (consideration given or received for new holding on a reorganisation).
- [^{F348}(6A) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of section 762A (exchange of interests of different classes), the 1992 Act shall have effect as if an amount equal to the offshore income gain to which that disposal gives rise were given (by the person making the exchange) as consideration for the new holding (within the meaning of section 128 of that Act (consideration given or received for new holding on a reorganisation)).]
- (7) In any case where—
- (a) a disposal to which this Chapter applies by virtue of subsection (3) of section 758 is made otherwise than to the offshore fund concerned or the persons referred to in subsection (2)(b) of that section; and
 - (b) subsequently, a distribution which is referable to the asset disposed of is paid either to the person who made the disposal or to a person connected with him; and
 - (c) the disposal gives rise (in accordance with Part II of Schedule 28) to an offshore income gain;
- then, for the purposes of the Tax Acts, the amount of the first distribution falling within paragraph (b) above shall be taken to be reduced or, as the case may be, extinguished by deducting therefrom an amount equal to the offshore income gain referred to in paragraph (c) above and, if that amount exceeds the amount of that first distribution, the balance shall be set against the second and, where necessary, any later distribution falling within paragraph (b) above, until the balance is exhausted.
- [^{F349}(8) For the purposes of subsection (7)(b) above, whether the person who made the disposal is connected with another person is determined in accordance with section 839.]

Textual Amendments

- F346** Words in s. 763(1)–(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(49)** (with ss. 60, 101(1), 171, 201(3))
- F347** Words in s. 763(6) substituted (with retrospective effect in accordance with Sch. 26 para. 16(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 16(1)** (with Sch. 26 para. 17)
- F348** S. 763(6A) inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 15(2)** (with Sch. 26 para. 17)
- F349** S. 763(8) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 181** (with Sch. 2)

Marginal Citations

- M28** Source—1984 s.98

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764 Offshore income gains of trustees.

F350

Textual Amendments

F350 S. 764 repealed (6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 paras. 23, 27(1), Sch. 26 Pt. 3(15), Note

CHAPTER VI

MISCELLANEOUS

Migration etc. of company

765 Migration etc. of companies.

^{M29}(1) Subject to the provisions of this section [^{F351}and section 765A], all transactions of the following classes shall be unlawful unless carried out with the consent of the Treasury, that is to say—

- (a) *for a body corporate resident in the United Kingdom to cease to be so resident; or*
- (b) *for the trade or business or any part of the trade or business of a body corporate so resident to be transferred from that body corporate to a person not so resident; or*

^{F352}(c) for a body corporate [^{F353}resident in the United Kingdom] to cause or permit a body corporate not so resident over which it has control to create or issue any shares or debentures; or

- (d) except for the purpose of enabling a person to be qualified to act as a director, for a body corporate so resident to transfer to any person, or cause or permit to be transferred to any person, any shares or debentures of a body corporate not so resident over which it has control, being shares or debentures which it owns or in which it has an interest.

(2) Nothing in subsection (1)(c) above shall apply to the giving to the bankers of the body corporate not resident in the United Kingdom of any security for the payment of any sum due or to become due from it to them by reason of any transaction entered into with it by them in the ordinary course of their business as bankers.

(3) Nothing in subsection (1)(c) above shall apply to the giving by the body corporate not resident in the United Kingdom to an insurance company of any security for the payment of any sum due or to become due from that body corporate to that company by reason of any transaction entered into with that body corporate by that company in the ordinary course of that company's business by way of investment of its funds.

(4) Any consent granted by the Treasury under this section—

- (a) may be given either specially (that is to say, so as to apply only to specified transactions of or relating to a specified body corporate) or generally (that is to say, so as not only so to apply); and
- (b) may, if given generally, be revoked by the Treasury; and

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- (c) may in any case be absolute or conditional; and
- (d) shall be published in such a way as to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in the opinion of the Treasury publication is not necessary for that purpose.

Textual Amendments

F351 1990 s.68(1), (4) *in relation to transactions carried out on or after 1 July 1990.*

F352 *Repealed by 1988(F) ss.105(6), 148 and Sch.14 Part IV from 15 March 1988. And see 1988(F) ss.61, 130-132 and Sch.7 for new requirements for companies from 15 March 1988.*

F353 1988(F) s.105(6) *from 15 March 1988. Previously*
“so resident”.

Modifications etc. (not altering text)

C29 *Provisions of this section employed in 1988(F) ss.105, 130 and Sch.7.*

Marginal Citations

M29 Source—1970 s.482(1)-(4)

[^{F354}765A] **Movements of capital between residents of member States.**

- (1) Section 765(1) shall not apply to a transaction which is a movement of capital to which Article 1 of the ^{M30} Directive of the Council of the European Communities dated 24th June 1988 No. [88/361/EEC](#) applies.
- (2) Where if that Article did not apply to it a transaction would be unlawful under section 765(1), the body corporate in question (that is to say, the body corporate resident in the United Kingdom) shall—
 - (a) give to the Board within six months of the carrying out of the transaction such information relating to the transaction, or to persons connected with the transaction, as regulations made by the Board may require, and
 - (b) where notice is given to the body corporate by the Board, give to the Board within such period as is prescribed by regulations made by the Board (or such longer period as the Board may in the case allow) such further particulars relating to the transaction, to related transactions, or to persons connected with the transaction or related transactions, as the Board may require.]

Textual Amendments

F354 *S. 765A inserted (with effect in accordance with s. 68(4) of the amending Act) by [Finance Act 1990](#) (c. 29), s. 68(2)*

Marginal Citations

M30 O.J. No. L178/5

766 **Offences under section 765.**

- (1) ^{M31} Any person who, whether within or outside the United Kingdom, does or is a party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result

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in, something which is unlawful under section 765(1) shall be guilty of an offence under this section.

- (2) In any proceedings in respect of such an offence against a director of the body corporate in question (that is to say, the body corporate which is or was resident in the United Kingdom) or against any person who was purporting to act in that capacity—
- (a) it shall be presumed that he was a party to every act of that body corporate unless he proves that it was done without his consent or connivance; and
 - (b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in or would amount to or result in, something which is unlawful under section 765(1) was to his knowledge such an act.
- (3)^{M32} Any person who is guilty of an offence under this section shall be liable on conviction on indictment—
- (a) to imprisonment for not more than two years or to a fine, or to both; or
 - (b) where the person in question is a body corporate which is or was resident in the United Kingdom, to a fine not exceeding an amount equal to three times the corporation tax, capital gains tax and income tax paid or payable which is attributable to the income, profits or gains (including chargeable gains) arising in the 36 months immediately preceding the commission of the offence, or £10,000, whichever is the greater;

and proceedings in respect of such an offence alleged to have been committed by a person may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

- (4)^{M33} No proceedings for an offence under this section shall be instituted, in England or Wales, except by or with the consent of the Attorney General, or in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.

Marginal Citations

M31 Source—1970 s.482(5)

M32 Source—1970 s.482(6)

M33 Source—1970 s.482(11)

767 Interpretation and commencement of sections 765 and 766.

- (1)^{M34} A body corporate shall be deemed for the purposes of sections 765 and 766 to be resident or not to be resident in the United Kingdom according as the central management and control of its trade or business is or is not exercised in the United Kingdom.
- (2) If it is shown that it has been established as between the Crown and a body corporate for any income tax or corporation tax purpose that the body corporate was resident or ordinarily resident in the United Kingdom for any year of assessment or other period, it shall be presumed, except so far as the contrary is proved, that that body corporate was resident in the United Kingdom for the purposes of sections 765 and 766 at the beginning of that year of assessment or other period and that it continued to be so resident at all times thereafter.
- (3)^{M35} Where the functions of a body corporate consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be

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deemed for the purposes of this section and sections 765 and 766 to be a business carried on by the body corporate.

(4) *Notwithstanding anything in the preceding provisions of this section or in sections 765 and 766, in no event shall a mere transfer of assets by a body corporate not resulting in a substantial change in the character or extent of the trade or business of that body corporate be treated for the purposes of sections 765 and 766 as a transfer of part of its trade or business*^{F355}.

(5) In this section and in sections 765 and 766—

^{F356}“share” has, in relation to any body corporate, the meaning given by Part 26 of the Companies Act 1985 in relation to a company;

“debenture” has, in relation to any body corporate, the meaning given by section 738 of the Companies Act 2006 in relation to a company;

“director” has, in relation to any body corporate, the meaning given by section 250 of the Companies Act 2006 in relation to a company;]

“control” (except in the expression “central management and control”) has, in relation to a body corporate, the meaning given by section 840;

“transfer”, in relation to shares or debentures, includes a transfer of any beneficial interest therein;

“insurance company” means a body corporate lawfully carrying on business as an insurer, whether in the United Kingdom or elsewhere; and

“funds” in relation to an insurance company means the funds held by it in connection with that business;

and a body corporate shall not be deemed for the purposes of this section and sections 765 and 766 to cease to be resident in the United Kingdom by reason only that it ceases to exist^{F357}.

(6) ^{M36}This section and sections 765 and 766 shall come into force on 6th April 1988 to the exclusion of section 482 of the 1970 Act (which is re-enacted by those sections); but any offence committed before 6th April 1988 shall not be punishable under section 766 and neither this subsection nor any other provision of this Act shall prevent any such offence from being punishable as if this Act had not been passed.

Textual Amendments

F355 Repealed by 1988(F) s.148 and Sch.14 Part IV from 15 March 1988 subject to 1988(F) s.105(6).

F356 S. 767(5): definitions of “share”, “debenture” and “director” substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), 11

F357 Repealed by 1988(F) s.148 and Sch.14 Part IV from 15 March 1988 subject to 1988(F) s.105(6).

Marginal Citations

M34 Source—1970 s.482(7)

M35 Source—1970 s.482(8)-(10)

M36 Source—1970 s.482(12)

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Change in ownership of company

767A Change in company ownership: corporation tax.

- (1) Where it appears to the Board that—
 - (a) there has been a change in the ownership of a company (“the tax-payer company”),
 - (b) any corporation tax assessed on the tax-payer company for an accounting period beginning before the change remains unpaid at any time after the relevant date, and
 - (c) any of the three conditions mentioned below is fulfilled,any person mentioned in subsection (2) below may be assessed by the Board and charged (in the name of the tax-payer company) to an amount of corporation tax in accordance with this section.
- (2) The persons are—
 - (a) any person who at any time during the relevant period before the change in the ownership of the tax-payer company had control of it;
 - (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before that change.
- (3) In subsection (2) above, “the relevant period” means—
 - (a) the period of three years before the change in the ownership of the tax-payer company; or
 - (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the tax-payer company (“the earlier change”), the period elapsing between the earlier change and the later change.
- (4) The first condition is that—
 - (a) at any time during the period of three years before the change in the ownership of the tax-payer company the activities of a trade or business of that company cease or the scale of those activities become small or negligible; and
 - (b) there is no significant revival of those activities before that change occurs.
- (5) The second condition is that at any time after the change in the ownership of the tax-payer company, but under arrangements made before that change, the activities of a trade or business of that company cease or the scale of those activities become small or negligible.
- (6) The third condition is that—
 - (a) at any time during the period of six years beginning three years before the change in the ownership of the tax-payer company there is a major change in the nature or conduct of a trade or business of that company;
 - (b) there is a transfer or there are transfers of assets of the tax-payer company to a person mentioned in subsection (7) below or to any person under arrangements which enable any of those assets or any assets representing those assets to be transferred to a person mentioned in subsection (7) below;
 - (c) that transfer occurs or those transfers occur during the period of three years before the change in the ownership of the tax-payer company or after that change but under arrangements made before that change; and
 - (d) the major change mentioned in paragraph (a) above is attributable to that transfer or those transfers.

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- (7) The persons are—
 - (a) any person mentioned in subsection (2)(a) above; and
 - (b) any person connected with him.
- (8) The amount of tax charged in an assessment made under this section must not exceed the amount of the tax which, at the time of that assessment, remains unpaid by the tax-payer company.
- (9) For the purposes of this section the relevant date is the date six months from the date on which the corporation tax is assessed as mentioned in subsection (1)(b) above.
- (10) Any assessment made under this section shall not be out of time if made within three years from the date on which the liability of the tax-payer company to corporation tax for the accounting period mentioned in subsection (1)(b) above is finally determined.

Modifications etc. (not altering text)

C30 Ss. 767A-768E: *The Pension Protection Fund (Tax) Regulations 2006* (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

[^{F358}767A] Change in company ownership: postponed corporation tax.

- (1) Where it appears to the Board that—
 - (a) there has been a change in the ownership of a company (“the transferred company”),
 - (b) any corporation tax relating to an accounting period ending on or after the change has been assessed on the transferred company or an associated company,
 - (c) that tax remains unpaid at any time more than six months after it was assessed, and
 - (d) the condition set out in subsection (2) below is fulfilled,
 any person mentioned in subsection (4) below may be assessed by the Board and charged to an amount of corporation tax not exceeding the amount remaining unpaid.
- (2) The condition is that it would be reasonable (apart from this section) to infer, from either or both of—
 - (a) the terms of any transactions entered into in connection with the change, and
 - (b) the other circumstances of the change and of any such transactions,
 that at least one of those transactions was entered into by one or more of its parties on the assumption, as regards a potential tax liability, that that liability would be unlikely to be met, or met in full, if it were to arise.
- (3) In subsection (2) above the reference to a potential tax liability is a reference to a liability to pay corporation tax which—
 - (a) in circumstances which were reasonably foreseeable at the time of the change in ownership, or
 - (b) in circumstances the occurrence of which is something of which there was at that time a reasonably foreseeable risk,

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would or might arise from an assessment made, after the change in ownership, on the transferred company or an associated company (whether or not a particular associated company).

- (4) The persons mentioned in subsection (1) above are—
- (a) any person who at any time during the relevant period had control of the transferred company;
 - (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before the change in the ownership of the transferred company.
- (5) In subsection (4) above, “the relevant period” means—
- (a) the period of three years before the change in the ownership of the transferred company; or
 - (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the transferred company (“the earlier change”), the period elapsing between the earlier change and the later change.
- (6) For the purposes of this section a transaction is entered into in connection with a change in the ownership of a company if—
- (a) it is the transaction, or one of the transactions, by which that change is effected; or
 - (b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change in ownership have formed or will form a part.
- (7) For the purposes of this section—
- (a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;
 - (b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and
 - (c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them—
 - (i) would not have been entered into independently of the other or others; or
 - (ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms.
- (8) In this section references, in relation to the transferred company and an assessment to tax, to an associated company are references to any company (whenever formed) which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the transferred company;
 - (b) is a company of which the transferred company has control; or
 - (c) is a company under the control of the same person or persons as the transferred company.
- (9) A person assessed and charged to tax under this section shall be assessed and charged in the name of the company by whom the tax to which the assessment relates remains unpaid.

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- (10) Any assessment made under this section shall not be out of time if made within three years from the date of the final determination of the liability of the company by whom the tax remains unpaid to corporation tax for the accounting period for which that tax was assessed.]

Textual Amendments

F358 S. 767AA inserted (with effect in accordance with s. 114(2) of the amending Act) by Finance Act 1998 (c. 36), s. 114(1)

Modifications etc. (not altering text)

C31 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

767B Change of company ownership: supplementary.

- (1) In relation to corporation tax assessed under section 767A—
- (a) section 86 of the Management Act (interest on overdue tax), in so far as it has effect in relation to accounting periods ending on or before 30th September 1993, and
 - (b) section 87A of that Act (corresponding provision for corporation tax due for accounting periods ending after that date),
- shall have effect as if the references in section 86 to the reckonable date and in section 87A to the date when the tax becomes due and payable were, respectively, references to the date which is the reckonable date in relation to the tax-payer company and the date when the tax became due and payable by the tax-payer company.
- [^{F359}(1A) In relation to corporation tax assessed under section 767AA, section 87A of the Management Act shall have effect as if the references to the date when the tax becomes due and payable were references to the date when the tax became due and payable by the transferred company or the associated company (as the case may be).]
- (2) A payment in pursuance of an assessment under section 767A [^{F360}or 767AA] shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes; but any person making such a payment shall be entitled to recover an amount equal to the payment from the tax-payer company [^{F361}or the transferred company or associated company (as the case may be)].
 - (3) In subsection (2) above the reference to a payment in pursuance of an assessment includes a reference to a payment of interest under section 86 or 87A of the Management Act (as they have effect by virtue of subsection (1) above).
 - (4) For the purposes of [^{F362}sections 767A, 767AA and 767C], “control”, in relation to a company, shall be construed in accordance with section 416 as modified by subsections (5) and (6) below.
 - (5) In subsection (2)(a) for “the greater part of” there shall be substituted “50 per cent. of”.
 - (6) For subsection (3) there shall be substituted—
 - (”) Where two or more persons together satisfy any of the conditions in subsection (2) above and do so by reason of having acted together to put themselves in a position

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where they will in fact satisfy the condition in question, each of those persons shall be treated as having control of the company.”

- (7) In section 767A(6) “a major change in the nature or conduct of a trade or business” includes any change mentioned in any of paragraphs (a) to (d) of section 245(4); and also includes a change falling within any of those paragraphs which is achieved gradually as the result of a series of transfers.
- (8) In section 767A(6) “transfer”, in relation to an asset, includes any disposal, letting or hiring of it, and any grant or transfer of any right, interest or licence in or over it, or the giving of any business facilities with respect to it.
- (9) Section 839 shall apply for the purposes of section 767A(7).
- (10) Subsection (9) of section 768 shall apply for the purposes of [^{F363}sections 767A and 767AA] as it applies for the purposes of section 768.

Textual Amendments

- F359** S. 767B(1A) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(1)
- F360** Words in s. 767B(2) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(2)(a)
- F361** Words in s. 767B(2) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(2)(b)
- F362** Words in s. 767B(4) substituted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(3)
- F363** Words in s. 767B(10) substituted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(4)

Modifications etc. (not altering text)

- C32** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

[^{F364}767C] Change in company ownership: information.

- (1) This section applies where it appears to the Board that—
 - (a) there has been a change in the ownership of a company (“the subject company”); and
 - (b) in connection with that change a person (“the seller”) may be or become liable to be assessed and charged to corporation tax under section 767A or 767AA.
- (2) The Board may by notice require any person to supply to them—
 - (a) any document in the person’s possession or power which appears to the Board to be relevant for determining any one or more of the matters referred to in subsection (3) below; or
 - (b) any particulars which appear to them to be so relevant.
- (3) Those matters are—
 - (a) whether the seller is or may become liable as mentioned in subsection (1) above and the extent of the liability or potential liability; and
 - (b) whether the subject company or an associated company is or may become liable to be assessed to any tax in respect of which the seller is or could become

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liable as mentioned in subsection (1) above, and the extent of the liability or potential liability of the subject company or associated company.

- (4) Without prejudice to the following provisions of this section, the references in subsection (2) above to documents and particulars are references to the documents and particulars specified or described in the notice.
- (5) A notice under subsection (2) above must specify the period, which must not be less than 30 days, within which the notice must be complied with.
- (6) Any person to whom any documents are supplied under this section may take copies of them or of any extracts from them.
- (7) A notice under subsection (2) above shall not oblige a person to supply any documents or particulars relating to the conduct of any pending appeal relating to tax.
- (8) In relation to any notice under subsection (2) above—
- (a) subsection (4) of section 20B of the ^{M37}Taxes Management Act 1970 (rules relating to copies of documents) shall apply as it applies in relation to a notice under section 20(1) of that Act; and
 - (b) subsections (8) to (14) of section 20B of that Act (rules about obtaining documents etc. from professional advisers) shall apply as they apply in relation to a notice under section 20(3) of that Act but as if any reference to an inspector were a reference to the Board;
- and subsection (8C) of section 20 of that Act (exclusion of personal records and journalistic material) shall apply for the purposes of this section as it applies for the purposes of that section.
- (9) In this section references, in relation to the subject company and an assessment to tax, to an associated company are references to any company which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the subject company;
 - (b) is a company of which the subject company has control; or
 - (c) is a company under the control of the same person or persons as the subject company.
- (10) In this section “document” means anything in which information of any description is recorded.]

Textual Amendments

F364 S. 767C inserted (with effect in accordance with s. 115(3) of the amending Act) by Finance Act 1998 (c. 36), s. 115(1)

Modifications etc. (not altering text)

C33 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

Marginal Citations

M37 1970 c. 9.

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768 Change in ownership of company: disallowance of trading losses.

^{M38}(1) If—

- (a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
- (b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

no relief shall be given under section 393 by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

- (2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.
- (3) The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.
- (4) In subsection (1) above “major change in the nature or conduct of a trade” includes—
 - (a) a major change in the type of property dealt in, or services or facilities provided, in the trade; or
 - (b) a major change in customers, outlets or markets of the trade;and this section applies even if the change is the result of a gradual process which began outside the period of three years mentioned in subsection (1)(a) above.
- (5) In relation to any relief available under section 343 to a successor company, subsection (1) above shall apply as if any loss sustained by a predecessor company had been sustained by a successor company and as if the references to a trade included references to the trade as carried on by a predecessor company.
- (6) Where relief in respect of a company’s losses has been restricted under this section then, notwithstanding [^{F365}section 577(3) of the Capital Allowances Act], in applying the provisions of that Act about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made in taxing the company’s trade for any chargeable period before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership were sufficient to give effect to the allowance or deduction.
- (7) In applying subsection (6) above it shall be assumed that any profits or gains are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.
- (8) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than three years after), an assessment to give effect to the provisions of this section shall not be out of time if made within six years from that time, or the latest of those times.
- (9) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice by an inspector given for the purposes of this section, state

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whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities of any of them, shall furnish the name and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.

Textual Amendments

F365 Words in s. 768(6) substituted (with effect in accordance with s. 579 of the amending Act) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 55](#)

Modifications etc. (not altering text)

C34 Ss. 768, 768D modified (8.6.2005) by [Railways Act 2005 \(c. 14\)](#), s. 60(2), [Sch. 10 para. 11](#); S.I. 2005/1444, art. 2(1), [Sch. 1](#)

C35 Ss. 767A-768E: [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), [reg. 36](#) to be construed as one (6.4.2006) with these sections, by virtue of that reg.

C36 Ss. 768-768E modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 13 para. 30](#)

C37 See s.245—*calculation etc. of ACT on change of ownership.*

Marginal Citations

M38 Source—1970 s.483(1)-(7)

[768A] ^{F366}Change in ownership: disallowance of carry back of trading losses.

(1) In any case where—

(a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or

(b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

no relief shall be given under section 393A(1) [^{F367}or 393B(3)] by setting a loss incurred by the company in an accounting period ending after the change in ownership against any profits of an accounting period beginning before the change in ownership.

(2) Subsections (2) to (4), (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.

(3) This section applies in relation to changes in ownership occurring on or after 14th June 1991.]

Textual Amendments

F366 S. 768A inserted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 73(3)(4)(5), [Sch. 15 para. 20\(1\)](#)

F367 Words in s. 768A(1) inserted (with effect in accordance with s. 111(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 35 para. 6](#)

Modifications etc. (not altering text)

C38 Ss. 767A-768E: [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), [reg. 36](#) to be construed as one (6.4.2006) with these sections, by virtue of that reg.

C39 Ss. 768-768E modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 13 para. 30](#)

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[^{F369}768B^{F368} Change in ownership of company with investment business: deductions generally]

- (1) This section applies where there is a change in the ownership of [^{F370}a company with investment business] and—
 - (a) after the change there is a significant increase in the amount of the company’s capital; or
 - (b) within the period of six years beginning three years before the change there is a major change in the nature or conduct of the business carried on by the company; or
 - (c) the change in the ownership occurs at any time after the scale of the activities in the business carried on by the company has become small or negligible and before any considerable revival of the business.
- (2) For the purposes of subsection (1)(a) above, whether there is a significant increase in the amount of a company’s capital after a change in the ownership of the company shall be determined in accordance with the provisions of Part I of Schedule 28A.
- (3) In paragraph (b) of subsection (1) above “major change in the nature or conduct of a business” includes a major change in the nature of the investments held by the company, even if the change is the result of a gradual process which began before the period of six years mentioned in that paragraph.
- (4) For the purposes of this section—
 - (a) the accounting period of the company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;
 - (b) those parts shall be treated as two separate accounting periods; and
 - (c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.
- (5) In Schedule 28A—
 - (a) Part II shall have effect for identifying the amounts in issue for the accounting period being divided; and
 - (b) Part III shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.
- (6) Any sums which—
 - (a) [^{F371}are, or are treated as, expenses of management referable to the accounting period] being divided, and
 - (b) under Part III of Schedule 28A are apportioned to either part of that period, shall be treated for the purposes of section 75 [^{F372}expenses of management referable to that part].
- (7) Any charges which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of sections 338 and 75 as paid in that part.
- (8) Any allowances which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of [^{F373}section 253 of the Capital Allowances Act] and section [^{F374}75(7)] as falling to be made in that part.

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- (9) In computing the total profits of the company for an accounting period ending after the change in the ownership, no deduction shall be made under section 75 by reference to—
- (a) [^{F375}expenses of management deductible] or allowances falling to be made for an accounting period beginning before the change; or
 - (b) charges paid in such an accounting period.
- [^{F376}(10) Part IV of Schedule 28A shall have effect for the purpose of restricting, in a case where this section applies, the debits [^{F377}and non-trading deficits] to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in respect of the company’s loan relationships [^{F378}(including debits so brought into account by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)].]
- (12) Subject to the modification in subsection (13) below, subsections (6) to (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (13) The modification is that in subsection (6) of section 768 for the words “relief in respect of a company’s losses has been restricted” there shall be substituted “deductions from a company’s total profits [^{F379}, or the debits to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in the case of a company in respect of its loan relationships [^{F380}(or its derivative contracts by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)].] have been restricted.”
- (14) In this section [^{F381}“company with investment business”] has the same meaning as in Part IV.]

Textual Amendments

- F368** S. 768B sidenote substituted (with effect in accordance with ss. 42-44 of the amending Act) by virtue of Finance Act 2004 (c. 12), **Sch. 6 para. 3(7)**
- F369** Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 2**
- F370** Words in s. 768B(1) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(2)**
- F371** Words in s. 768B(6)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(3)(a)**
- F372** Words in s. 768B(6) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(3)(b)**
- F373** Words in s. 768B(8) substituted (with effect in accordance with s. 579 of the amending Act) by **Capital Allowances Act 2001 (c. 2), Sch. 2 para. 56**
- F374** Words in s. 768B(8) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(4)**
- F375** Words in s. 768B(9)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(5)**
- F376** S. 768B(10) substituted for s. 768B(10)(11) (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 39(1)** (with Sch. 15)
- F377** Words in s. 768B(10) inserted (with effect in accordance with Sch. 7 para. 3(9) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 3(1)**
- F378** Words in s. 768B(10) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 9(a)** (with Sch. 28)
- F379** Words in s. 768B(13) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 39(2)** (with Sch. 15)

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F380 Words in s. 768B(13) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 9(b)** (with Sch. 28)

F381 Words in s. 768B(14) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(6)**

Modifications etc. (not altering text)

C40 Ss. 768B, 768C modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 43(7)**

C41 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

C42 Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

[^{F369}768Deductions: asset transferred within group.

- (1) This section applies where—
 - (a) there is a change in the ownership of [^{F382}a company with investment business] (“the relevant company”);
 - (b) none of paragraphs (a) to (c) of section 768B(1) applies;
 - (c) after the change in the ownership the relevant company acquires an asset from another company in circumstances such that section 171(1) of the 1992 Act applies to the acquisition; and
 - (d) a chargeable gain (“a relevant gain”) accrues to the relevant company on a disposal of the asset within the period of three years beginning with the change in the ownership.
- (2) For the purposes of subsection (1)(d) above an asset acquired by the relevant company as mentioned in subsection (1)(c) above shall be treated as the same as an asset owned at a later time by that company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold and the first asset was a leasehold and the lessee has acquired the reversion.
- (3) For the purposes of this section—
 - (a) the accounting period of the relevant company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;
 - (b) those parts shall be treated as two separate accounting periods; and
 - (c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.
- (4) In Schedule 28A—
 - (a) Part V shall have effect for identifying the amounts in issue for the accounting period being divided; and
 - (b) Part VI shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.
- (5) Subsections (6) to (8) of section 768B shall apply in relation to the relevant company as they apply in relation to the company mentioned in subsection (1) of that section except that any reference in those subsections to Part III of Schedule 28A shall be read as a reference to Part VI of that Schedule.
- (6) Subsections (7) and (9) below apply only where, in accordance with the relevant provisions of the 1992 Act and Part VI of Schedule 28A, an amount is included in

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respect of chargeable gains in the total profits for the accounting period of the relevant company in which the relevant gain accrues.

- (7) In computing the total profits of the relevant company for the accounting period in which the relevant gain accrues, no deduction shall be made under section 75 by reference to—
- (a) [^{F383}expenses of management deductible] or allowances falling to be made for an accounting period of the relevant company beginning before the change in ownership, or
 - (b) charges paid in such an accounting period,
- from an amount of the total profits equal to the amount which represents the relevant gain.
- (8) For the purposes of this section, the amount of the total profits for an accounting period which represents the relevant gain is—
- (a) where the amount of the relevant gain does not exceed the amount which is included in respect of chargeable gains for that period, an amount equal to the amount of the relevant gain;
 - (b) where the amount of the relevant gain exceeds the amount which is included in respect of chargeable gains for that period, the amount so included.
- [^{F384}(9) Part IV of Schedule 28A shall have effect for the purpose of restricting, in a case where this section applies, the debits [^{F385}and non-trading deficits] to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in respect of the relevant company’s loan relationships [^{F386}(including debits so brought into account by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)].]
- (11) Subsections (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (12) In this section—
- “the relevant provisions of the 1992 Act” means section 8(1) of and Schedule 7A to that Act; and
- [^{F387}“company with investment business” has the same meaning as in Part 4.]
- [This section applies in relation to an asset to which Schedule 29 to the Finance Act
- ^{F388}(13) 2002 applies (intangible fixed assets), with the following adaptations—
- (a) for the reference to section 171(1) of the 1992 Act substitute a reference to paragraph 55 of that Schedule;
 - (b) for any reference to a chargeable gain under that Act substitute a reference to a chargeable realisation gain within the meaning of that Schedule that is a credit within paragraph 34(1)(a) of that Schedule (non-trading credits);
 - (c) for any reference to a disposal of the asset substitute a reference to its realisation within the meaning of that Schedule;
 - (d) for the reference to the relevant provisions of the 1992 Act substitute a reference to Part 6 of that Schedule.]]

Textual Amendments

F369 Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 2

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- F382** Words in s. 768C(1) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 4(2)**
- F383** Words in s. 768C(7)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 4(3)**
- F384** S. 768C(9) substituted for s. 768C(9)(10) (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 40** (with Sch. 15)
- F385** Words in s. 768C(9) inserted (with effect in accordance with Sch. 7 para. 3(9) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 3(2)**
- F386** Words in s. 768C(9) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 10** (with Sch. 28)
- F387** S. 768C(12): definition substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 4(4)**
- F388** S. 768C(13) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(2)**

Modifications etc. (not altering text)

- C43** Ss. 768B, 768C modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 43(7)**
- C44** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.
- C45** Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

[^{F389}768D] Change in ownership of company carrying on property business.

- (1) This section applies where there is a change in the ownership of a company carrying on a Schedule A business and—
 - (a) in the case of [^{F390}a company with investment business], either—
 - (i) paragraph (a), (b) or (c) of section 768B(1) applies, or
 - (ii) section 768C applies;
 - (b) in the case of a company which is not [^{F391}a company with investment business], paragraph (a) or (b) of section 768(1) applies.
- (2) Where this section applies the following provisions have effect to prevent relief being given under section 392A by setting a Schedule A loss incurred by the company before the change of ownership against profits arising after the change.
- (3) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.
- (4) The profits or losses of the period in which the change occurs are apportioned to those two periods—
 - (a) in the case of [^{F392}a company with investment business]—
 - (i) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts II and III of Schedule 28A, or
 - (ii) where section 768C applies, in accordance with Parts V and VI of that Schedule, and
 - (b) in the case of a company which is not [^{F393}a company with investment business], according to the length of the periods,

unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.

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- (5) Relief under section 392A(1) against total profits of the same accounting period is available only in relation to each of those periods considered separately.
- (6) A loss made in any accounting period beginning before the change of ownership may not be set off under section 392A(2) against, or deducted by virtue of section 392A(3) from—
- (a) in the case of—
 - (i) [^{F394}a company with investment business] where paragraph (a), (b) or (c) of section 768B(1) applies, or
 - (ii) a company which is not [^{F394}a company with investment business], profits of an accounting period ending after the change of ownership;
 - (b) in the case of [^{F394}a company with investment business] where section 768C applies, from so much of those profits as represents the relevant gain within the meaning of that section.
- (7) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.
- (8) In this section—
- (a) any reference to a case where paragraph (a) or (b) of section 768(1) applies includes the case where that paragraph would apply if the reference there to a trade carried on by the company were to a Schedule A business carried on by it;
 - [^{F395}(b) “company with investment business” has the same meaning as in Part 4.]
- (9) The provisions of this section apply in relation to an overseas property business as they apply in relation to a Schedule A business.]

Textual Amendments

- F389** S. 768D inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 31** (with Sch. 5 para. 73)
- F390** Words in s. 768D(1)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(2)(a)**
- F391** Words in s. 768D(1)(b) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(2)(b)**
- F392** Words in s. 768D(4)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(3)(a)**
- F393** Words in s. 768D(4)(b) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(3)(b)**
- F394** Words in s. 768D(6) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(4)**
- F395** S. 768D(8)(b) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(5)**

Modifications etc. (not altering text)

- C46** Ss. 768, 768D modified (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 11**; S.I. 2005/1444, art. 2(1), **Sch. 1**
- C47** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.
- C48** Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

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[^{F396}768E Change in ownership of company with unused non-trading loss on intangible fixed assets

- (1) Where there is a change in the ownership of [^{F397}a company with investment business] and either—
 - (a) paragraph (a), (b) or (c) of section 768B(1) applies, or
 - (b) section 768C applies,the following provisions have effect to prevent relief being given under paragraph 35 of Schedule 29 to the Finance Act 2002 by setting a non-trading loss on intangible fixed assets incurred by the company before the change of ownership against profits arising after the change.
- (2) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.
- (3) The profits or losses of the period in which the change occurs are apportioned to those two periods—
 - (a) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts 2 and 3 of Schedule 28A, or
 - (b) where section 768C applies, in accordance with Parts 5 and 6 of that Schedule, unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.
- (4) Relief under paragraph 35 of Schedule 29 to the Finance Act 2002 against total profits of the same accounting period is available only in relation to each of those periods considered separately.
- (5) A loss made in any accounting period beginning before the change of ownership may not be set off under paragraph 35(3) of Schedule 29 to the Finance Act 2002 against—
 - (a) in a case where paragraph (a), (b) or (c) of section 768B(1) applies, profits of an accounting period ending after the change of ownership;
 - (b) in a case where section 768C applies, so much of those profits as represents the relevant gain within the meaning of that section.
- (6) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.
- (7) In this section [^{F398}“company with investment business”] has the same meaning as in Part 4.]

Textual Amendments

F396 S. 768E inserted (24.7.2002) by Finance Act 2002 (c. 23), Sch. 30 para. 4(3)

F397 Words in s. 768E(1) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), Sch. 6 para. 6(2)

F398 Words in s. 768E(7) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), Sch. 6 para. 6(3)

Modifications etc. (not altering text)

C49 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

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C50 Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), Sch. 13 para. 30

769 Rules for ascertaining change in ownership of company.

^{M39}(1) For the purposes of [^{F399}sections 767A, [^{F400}767AA, 767C,] 768, 768A, 768B [^{F401}, 768C and 768D]] there is a change in the ownership of a company—

- (a) if a single person acquires more than half the ordinary share capital of the company; or
- (b) if two or more persons each acquire a holding of 5 per cent. or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company; or
- (c) if two or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent. unless it is an addition to an existing holding and the two holdings together amount to 5 per cent. or more of the ordinary share capital of the company.

(2) In applying subsection (1) above—

- (a) the circumstances at any two points of time with not more than three years between may be compared, and a holder at the later time may be regarded as having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;
- (b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;
- (c) to decide for the purposes of subsection (1)(b) or (c) above if any person has acquired a holding of at least 5 per cent., or a holding which makes at least 5 per cent. when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons within the meaning of section 839 shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;
- (d) any acquisition of shares under the will or on the intestacy of a deceased person [^{F402}, and any gift of shares which] is unsolicited and made without regard to the provisions of [^{F403}sections 767A, [^{F404}767AA,] 768, 768A, 768B [^{F401}, 768C and 768D]], ^{F405} . . . shall be left out of account.

[^{F406}(2A) Where—

- (a) persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, and
- (b) because of that fact ownership of the ordinary share capital may not be an appropriate test of whether there has been a change in the ownership of the company,

then, in considering whether there has been a change in the ownership of the company for the purposes of section 767A [^{F407}, 767AA or 767C], holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other kind of special power may be taken into account instead of ordinary share capital.]

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- (3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then, in considering whether there has been a change in the ownership of the company for the purposes of section 768 [F408, 768A or 768D], holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.
- [F409](3A) Subsection (3) above shall apply for the purposes of sections 768B and 768C as if the reference to the benefit of losses were a reference to the benefit of deductions.]
- (4) Where [F410]section 768, 768A, 768B [F411, 768C or 768D] has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.
- (5) A change in the ownership of a company shall be disregarded for the purposes of [F412]sections 767A, [F400]767AA, 767C,] 768, 768A, 768B [F401, 768C and 768D] if—
- (a) immediately before the change the company is the 75 per cent. subsidiary of another company, and
 - (b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent. subsidiary.
- [F413](6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—
- (a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;
 - (b) in a case falling within subsection (1)(b) above but not within subsection (1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and
 - (c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.
- (6A) In subsection (6) above—
- “the appropriate proportion”, in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and
- “relevant assets”, in relation to a company, means—
- (a) any ordinary share capital of another company, and
 - (b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

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- (6B) Notwithstanding that at any time a company (“the subsidiary company”) is a 75 per cent. subsidiary of another company (“the parent company”) it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—
- (a) the parent company would be beneficially entitled to not less than 75 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
 - (b) the parent company would be beneficially entitled to not less than 75 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.
- (6C) Schedule 18 shall apply for the purposes of subsection (6B) above as it applies for the purposes of section 413(7).]
- (7) For the purposes of this section—
- (a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly;
 - (b) *a company shall be deemed to be a 75 per cent. subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies*^{F414};
 - (c) *the amount of ordinary share capital of one company owned by a second company through another company or other companies or partly directly and partly through another company or other companies, shall be determined in accordance with subsections (5) to (10) of section 838; and*
 - ^{F415}(d) “shares” includes stock.
- (8) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition was made by a person holding such a contract, then the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.
- ^{F416}(9) Subsection (8) above shall not apply in relation to section 767A [^{F407}, 767AA or 767C].]

Textual Amendments

- F399** Words in s. 769(1) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 4(2)
- F400** Word in s. 769(1)(5) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(5)(a)
- F401** Words in s. 769(1)(2)(d)(5) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 32(a) (with Sch. 5 para. 73)
- F402** Words in s. 769(2)(d) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 37(a)
- F403** Words in s. 769(2)(d) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 4(2)

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- F404** Word in s. 769(2)(d) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(5)(b)
- F405** Words in s. 769(2)(d) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 37(b), Sch. 41 Pt. 5(10), Note
- F406** S. 769(2A) inserted (with effect in accordance with s. 135(6) of the amending Act) by Finance Act 1994 (c. 9), s. 135(4)
- F407** Words in s. 769(2A)(9) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(5)(c)
- F408** Words in s. 769(3) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 32(b) (with Sch. 5 para. 73)
- F409** S. 769(3A) inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 4(3)
- F410** Words in s. 769(4) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 4(4)
- F411** Words in s. 769(4) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 32(c) (with Sch. 5 para. 73)
- F412** Words in s. 769(5) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 4(2)
- F413** S. 769(6)-(6C) substituted (*in relation to change of ownership occurring on or after 14 March 1989*) by Finance Act 1989 (c. 26, SIF 63:1), s. 100(2).
- F414** Repealed by 1989 ss.100(3), 187 and Sch.17 Part IV where the change of ownership of a company would be treated as occurring on or after 14 March 1989.
- F415** Repealed by 1989 ss.100(3), 187 and Sch.17 Part IV where the change of ownership of a company would be treated as occurring on or after 14 March 1989.
- F416** S. 769(9) inserted (with effect in accordance with s. 135(6) of the amending Act) by Finance Act 1994 (c. 9), s. 135(5)

Modifications etc. (not altering text)

C51 See s.245—calculation etc. of ACT on change of ownership.

Marginal Citations

M39 Source—1970 s.484

Transactions between associated persons

[^{F417}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.]

Textual Amendments

F417 S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), s. 108(1); S.I. 1998/3173, art. 2

^{F417}770 Sales etc. at an undervalue or overvalue.

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Textual Amendments

F417 S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), s. 108(1); S.I. 1998/3173, art. 2

^{F417}771 Transactions by petroleum companies.

.....

Textual Amendments

F417 S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), s. 108(1); S.I. 1998/3173, art. 2

^{F417}772 Information for purposes of section 770, and appeals.

.....

Textual Amendments

F417 S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), s. 108(1); S.I. 1998/3173, art. 2

^{F417}773 Interpretation of sections 770 and 771.

.....

Textual Amendments

F417 S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), s. 108(1); S.I. 1998/3173, art. 2

774 Transactions between dealing company and associated company.

^{M40}(1) Subject to the provisions of this section, where—

- (a) a dealing company becomes entitled to a deduction, in computing the profits or gains of the company for tax purposes for any period, in respect of the depreciation in the value of any right subsisting against an associated company, being a non-dealing company; or
- (b) a dealing company makes any payment to such an associated company, being a payment in respect of which the dealing company is entitled to a deduction in computing its profits or gains for tax purposes for any period;

and the depreciation or payment is not brought into account in computing the profits or gains of the non-dealing company, that company shall be deemed to have received on the last day of the period income of an amount equal to the amount of the deduction and shall be chargeable [^{F418}to tax] in respect thereof [^{F419}(in the case of corporation tax, under Case VI of Schedule D)].

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- (2) Where the non-dealing company is carrying on a trade, the income referred to in subsection (1) above shall, if the company so elects, not be so chargeable but shall be deemed to have been a receipt of the trade, or, if the company is carrying on more than one trade, to have been a receipt of such one of the trades as the company may choose.
- (3) Where the non-dealing company is carrying on, or was formed to carry on a trade, then if—
- (a) either—
 - (i) the right subsisting against it was a right to the repayment of moneys lent for meeting expenditure which has proved (in whole or in part) abortive, or
 - (ii) the payment to the company was made for meeting such expenditure, and
 - (b) that expenditure is such that the company is not entitled in respect of it to any allowance or deduction in computing losses or gains,
- subsection (1) above shall not apply in so far as the expenditure proved abortive.
- (4) For the purposes of this section—
- (a) “company” includes any body corporate;
 - (b) “dealing company” means a company dealing in securities, land or buildings and includes any company whose profits on the sale of securities, land or buildings are part of its trading profits;
 - (c) “non-dealing company” means any company which is not a dealing company;
 - (d) two or more companies shall be treated as associated companies if one has control of the other or others, or any person has control of both or all of them;
 - (e) references to a company (“the first company”) having control of another company (“the second company”) shall be construed as references to the first company having control of the second company either by itself or in conjunction with any person having control over the first company, and “control” has the meaning given by section 840;
 - (f) “securities” includes shares and stock.
- (5) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred any such liability to tax.

Textual Amendments

F418 Words in s. 774(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5)*, **Sch. 1 para. 310(a)** (with Sch. 2)

F419 Words in s. 774(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5)*, **Sch. 1 para. 310(b)** (with Sch. 2)

Marginal Citations

M40 Source—1970 s.486

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^{F420} Factoring of income receipts etc

Textual Amendments

F420 Ss. 774A-774G and preceding cross-heading inserted (with effect in accordance with Sch. 6 para. 6(2)-(7) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 6(1)

774A Meaning of “structured finance arrangement” for purposes of s.774B

- (1) For the purposes of section 774B an arrangement is a structured finance arrangement in relation to a person (“the borrower”) if the following condition is met in relation to the borrower.
- (2) The condition is that—
 - (a) under the arrangement the borrower receives from another person (“the lender”) any money or other asset (“the advance”) in any period,
 - (b) in accordance with generally accepted accounting practice the accounts of the borrower for that period record a financial liability in respect of the advance,
 - (c) the borrower, or a person connected with the borrower, makes a disposal of an asset (“the security”) under the arrangement to or for the benefit of the lender or a person connected with the lender,
 - (d) the lender, or a person connected with the lender, is entitled under the arrangement to payments in respect of the security, and
 - (e) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower.
- (3) For the purposes of this section, in any case where the borrower is a partnership, references to the accounts of the borrower include the accounts of any member of the partnership.
- (4) For the purposes of this section and section 774B—
 - (a) references to a person connected with the borrower do not include the lender, and
 - (b) references to a person connected with the lender do not include the borrower.

774B Disregard of intended effects of arrangement involving disposals of assets

- ^{F421}(1) This section applies if an arrangement is a structured finance arrangement in relation to a person (“the borrower”).
- (1A) If the arrangement would (disregarding this section) have had the relevant effect (see subsections (2) and (3)), the arrangement is not to have that effect.
 - (1B) If the arrangement would (disregarding this section) not have had that effect, the payments mentioned in section 774A(2)(d) are to be treated for tax purposes as income of the borrower payable in respect of the security (whether or not those payments are also the income of anyone else for tax purposes).]
 - (2) If the borrower is a person other than a partnership, the relevant effect is that—
 - (a) an amount of income on which the borrower, or a person connected with the borrower, would otherwise have been charged to tax is not so charged,

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- (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower, or of a person connected with the borrower, is not so brought into account, or
 - (c) the borrower, or a person connected with the borrower, becomes entitled to an income deduction.
- (3) If the borrower is a partnership, the relevant effect is that—
- (a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or
 - (c) a member of the partnership becomes entitled to an income deduction.
- (4) If—
- (a) [^{F422}a person in relation to whom this section applies is] within the charge to income tax, and
 - (b) in accordance with generally accepted accounting practice the accounts of the person record an amount as a finance charge in respect of the advance,
- that person may treat the amount for income tax purposes as interest payable on a loan.
- (5) [^{F423}If a person in relation to whom this section applies is] within the charge to corporation tax—
- (a) the advance is to be treated, in relation to the company, for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as a money debt owed by the company,
 - (b) the arrangement is to be treated, in relation to the company, for the purposes of that Chapter as a loan relationship of the company (as a debtor relationship), and
 - (c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the company as a finance charge in respect of the advance is to be treated as interest payable under that relationship.
- (6) For the purposes of this section, in any case where the borrower is a partnership,—
- (a) references to accounts include the accounts of the partnership, and
 - (b) any deemed interest is treated as payable by the partnership (whether or not the finance charge is recorded in the accounts of the partnership).
- (7) For the purpose of determining when any deemed interest in respect of the advance is paid—
- (a) the payments mentioned in section 774A(2)(d) are treated as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance, and
 - (b) the interest elements of those payments are treated as paid when those payments are paid,
- and the deemed interest in respect of the advance is treated as paid at the times when the interest elements are treated as paid.
- (8) In this section “deemed interest” means any amount which is treated as interest as a result of subsection (4) or (5).

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(9) This section is subject to the exceptions contained in section 774E.

Textual Amendments

F421 S. 774B(1)-(1B) substituted for s. 774B(1) (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 3(2)

F422 Words in s. 774B(4)(a) substituted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 3(3)

F423 Words in s. 774B(5) substituted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 3(4)

774C Meaning of “structured finance arrangement” for purposes of s.774D

(1) For the purposes of section 774D an arrangement is a structured finance arrangement in relation to a partnership (“the borrower partnership”) if condition A or B is met in relation to the borrower partnership.

(2) Condition A is that—

- (a) a person (“the transferor partner”) disposes of an asset (“the security”) under the arrangement to the borrower partnership,
- (b) the transferor partner is a member of the borrower partnership immediately after the disposal (whether or not a member immediately before the disposal),
- (c) under the arrangement the borrower partnership receives from another person (“the lender”) any money or other asset (“the advance”) in any period,
- (d) in accordance with generally accepted accounting practice the accounts of the borrower partnership for that period record a financial liability in respect of the advance,
- (e) there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender (see subsection (6)),
- (f) under the arrangement the share of the lender or person connected with the lender in the profits of the borrower partnership is determined by reference (wholly or partly) to payments in respect of the security, and
- (g) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower partnership.

(3) For the purposes of condition A, references to the accounts of the borrower partnership include the accounts of the transferor partner.

(4) Condition B is that—

- (a) the borrower partnership holds an asset (“the security”) as a partnership asset at any time before the arrangement is made,
- (b) under the arrangement the borrower partnership receives from another person (“the lender”) any money or other asset (“the advance”) in any period,
- (c) in accordance with generally accepted accounting practice the accounts of the borrower partnership for that period record a financial liability in respect of the advance,
- (d) there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender,

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- (e) under the arrangement the share of the lender or person connected with the lender in the profits of the borrower partnership is determined by reference (wholly or partly) to payments in respect of the security, and
 - (f) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower partnership.
- (5) For the purposes of condition B, references to the accounts of the borrower partnership include the accounts of any person who is a member of the partnership immediately before the arrangement is made.
- (6) For the purposes of this section and section 774D there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender if directly or indirectly in consequence of, or otherwise in connection with, the arrangement—
- (a) the lender, or a person connected with the lender, becomes a member of the borrower partnership at any time, or
 - (b) there is at any time a change in the share of a member of the borrower partnership in the profits of the borrower partnership in a case where that member is the lender or a person connected with the lender.
- (7) For the purposes of subsection (6)(b) the reference to a person connected with the lender includes a person who at any time becomes connected with the lender directly or indirectly in consequence of, or otherwise in connection with, the arrangement.

774D Disregard of intended effects of arrangement involving change in relation to a partnership

- (1) This section applies if—
- (a) an arrangement is a structured finance arrangement in relation to a partnership (“the borrower partnership”), and
 - (b) any relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender would (disregarding this section) have had the following effect.
- (2) The effect is that—
- (a) an amount of income on which a relevant member of the borrower partnership would otherwise have been charged to tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member of the borrower partnership is not so brought into account, or
 - (c) a relevant member of the borrower partnership becomes entitled to an income deduction.

[^{F424}(2A) In determining whether the condition in subsection (1)(b) is met it is to be assumed that amounts of income equal to the payments mentioned in section 774C(2)(f) or (4) (e) were payable to the borrower partnership before the time at which the relevant change in relation to its membership involving the lender or a person connected with the lender occurs.]

- (3) In this section “relevant member of the borrower partnership” means—
- (a) in any case where condition A in section 774C is met in relation to the arrangement, the transferor partner, and

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- (b) in any case where condition B in that section is met in relation to the arrangement, any person other than the lender who is a member of the borrower partnership immediately before the time at which the relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender occurs.
- (4) Part 9 of ITTOIA 2005 and section 114 above are to have effect in relation to any relevant member of the borrower partnership as if the relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender had not occurred.
- Accordingly, the structured finance arrangement is not to have the effect mentioned in subsection (2).
- (5) The following provisions of this section confer relief from tax the availability of which depends on which of the conditions in section 774C is met in relation to the arrangement.
- (6) In any case where condition A in section 774C is met, if—
- (a) the transferor partner is a person within the charge to income tax, and
 - (b) in accordance with generally accepted accounting practice the accounts of the borrower partnership record an amount as a finance charge in respect of the advance,
- the transferor partner may treat the amount for income tax purposes as interest payable by the transferor partner on a loan.
- (7) In any case where condition A in that section is met, if the transferor partner is a company within the charge to corporation tax—
- (a) the advance is to be treated, in relation to the company, for the purposes of paragraph 19 of Schedule 9 to the Finance Act 1996 (and the other provisions of Chapter 2 of Part 4 of that Act) as a money debt owed by the borrower partnership,
 - (b) the arrangement is to be treated, in relation to the company, as a transaction for the lending of money from which that debt is treated as arising for those purposes, and
 - (c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the borrower partnership as a finance charge in respect of the advance is to be treated as interest payable by the company under that transaction.
- (8) For the purposes of subsections (6) and (7), references to the accounts of the borrower partnership include the accounts of the transferor partner.
- (9) In any case where condition B in section 774C is met, if—
- (a) a relevant member of the borrower partnership is a person within the charge to income tax, and
 - (b) in accordance with generally accepted accounting practice the accounts of the borrower partnership record an amount as a finance charge in respect of the advance,
- the relevant partner may treat the amount for income tax purposes as interest payable by the borrower partnership on a loan.
- (10) In any case where condition B in that section is met, if a relevant member of the borrower partnership is a company within the charge to corporation tax—

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- (a) the advance is to be treated, in relation to the company, for the purposes of paragraph 19 of Schedule 9 to the Finance Act 1996 (and the other provisions of Chapter 2 of Part 4 of that Act) as a money debt owed by that partnership,
 - (b) the arrangement is to be treated, in relation to the company, as a transaction for the lending of money from which that debt is treated as arising for those purposes, and
 - (c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the borrower partnership as a finance charge in respect of the advance is to be treated as interest payable by the borrower partnership under that transaction.
- (11) For the purposes of subsections (9) and (10), references to the accounts of the borrower partnership include the accounts of any relevant member of the borrower partnership.
- (12) For the purpose of determining when any deemed interest in respect of the advance is paid—
- (a) the payments mentioned in section 774C(2)(f) or (4)(e) are treated as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance, and
 - (b) the interest elements of those payments are treated as paid when those payments are paid,
- and the deemed interest in respect of the advance is treated as paid at the times when the interest elements are treated as paid.
- (13) In this section “deemed interest” means any amount which is treated as interest as a result of any of subsections (6) to (10).
- (14) This section is subject to the exceptions contained in section 774E.

Textual Amendments

F424 S. 774D(2A) inserted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 4

774E Sections 774B and 774D: exceptions

- (1) Section 774B or 774D does not apply if the whole of the advance under the structured finance arrangement—
- (a) is charged to tax on a relevant person (see subsection (7)) as an amount of income,
 - (b) is brought into account in calculating for tax purposes any income of a relevant person, or
 - (c) is brought into account for the purposes of any provision of the Capital Allowances Act as a disposal receipt, or proceeds from a balancing event or disposal event, of a relevant person.

For the purposes of this subsection the effect of section 785A (rent factoring of leases of plant or machinery) is to be disregarded.

- (2) Subsection (1)(c) is not to be taken as met in any case where—
- (a) the receipt or proceeds gives rise to a balancing charge, and

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- (b) the amount of the balancing charge is limited by any provision of the Capital Allowances Act.
- (3) Section 774B or 774D does not apply if, at all times, the whole of the advance under the structured finance arrangement—
- (a) is a debtor relationship of a relevant person for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships), or
 - (b) would be a debtor relationship of a relevant person for those purposes if that person were a company within the charge to corporation tax.

For the purposes of this subsection references to a debtor relationship do not include a relationship to which section 100 of the Finance Act 1996 (money debts etc not arising from the lending of money) applies.

- (4) Section 774B or 774D does not apply in so far as the structured finance arrangement is an arrangement in relation to which—
- (a) section 263A of the 1992 Act (agreements for sale and repurchase of securities) applies,
 - ^{F425}(b) Schedule 13 to the Finance Act 2007 (sale and repurchase of securities) applies, or]
 - (c) Chapter 5 of Part 2 of the Finance Act 2005 (alternative finance arrangements) has effect.
- (5) Section 774B or 774D does not apply in so far as—
- (a) the security under the structured finance arrangement is plant or machinery which is the subject of a sale and finance leaseback, or
 - (b) the structured finance arrangement is an arrangement in relation to which ^{F426}sections 228B and 228C] of the Capital Allowances Act apply with the modifications contained in section 228F of that Act (lease and finance leaseback).
- (6) For the purposes of subsection (5)(a), whether plant or machinery is the subject of a sale and finance leaseback is determined in accordance with section 221 of the Capital Allowances Act.

^{F427}

- (7) For the purposes of this section a “relevant person” means—
- (a) if section 774B applies, ^{F428}the borrower under the structured finance arrangement, a person connected with that borrower or (if that borrower is a partnership) a member of the partnership], and
 - (b) if section 774D applies, a relevant member of the borrower partnership (within the meaning of that section).

Textual Amendments

- F425** S. 774E(4)(b) substituted (with effect in accordance with S.I. 2007/2483, art. 3) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 9
- F426** Words in s. 774E(5)(b) substituted (with effect in accordance with Sch. 5 para. 17(5)-(9) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 17(4)
- F427** Words in s. 774E(6) omitted (with effect in accordance with Sch. 20 para. 6(19) of the repealing Act) by virtue of Finance Act 2008 (c. 9), Sch. 20 para. 6(18)

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F428 Words in s. 774E(7)(a) substituted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 5

774F Sections 774B and 774D: power to provide further exceptions

- (1) The Treasury may make regulations prescribing other circumstances in which section 774B or 774D is not to apply in relation to a structured finance arrangement.
- (2) Any regulations under subsection (1) may make provision amending section 774E.
- (3) The power to make regulations under subsection (1) includes—
 - (a) power to make provision having effect in relation to times before the making of the regulations (but not times earlier than 6th June 2006),
 - (b) power to make different provision for different cases or different purposes, and
 - (c) power to make incidental, supplemental, consequential or transitional provision and savings.

774G Sections 774A to 774D: minor definitions etc

- (1) For the purposes of sections 774A to 774D “arrangement” includes any agreement or understanding (whether or not legally enforceable).
 - (2) For the purposes of sections 774A to 774D “income deduction” means—
 - (a) a deduction in calculating any income for tax purposes, or
 - (b) a deduction against total income or total profits.
 - (3) For the purposes of sections 774A to 774D—
 - (a) references to a person's receiving any asset [^{F429}include—
 - (i) the person's] obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it, [^{F430}and
 - (ii) the discharge (in whole or in part) of any liability of the person,]
 - (b) references to a disposal of an asset include anything which constitutes a disposal of the asset for the purposes of the 1992 Act,
 - (c) references to payments in respect of any asset [^{F431}include—
 - (i) payments in respect of any other asset substituted for it under the arrangement, and
 - (ii) obtaining] directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it.
 - (4) For the purposes of sections 774A to 774D, section 839 (connected persons) applies.
 - (5) For the purposes of sections 774A to 774D references to the accounts of any person who is a company include the consolidated group accounts of a group of companies of which it is a member.]
- [^{F432}(5A) In determining for the purposes of sections 774A to 774D whether an amount is recorded as a financial liability in respect of the advance it is to be assumed that the period of account in which the advance is received ended immediately after the receipt of the advance.]

Status: Point in time view as at 21/07/2008. This version of this part contains provisions that are not valid for this point in time.

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- (6) If any person does not draw up accounts in accordance with generally accepted accounting practice, sections 774A to 774D apply as if the accounts had been drawn up by the person in accordance with that practice.
- (7) Sections 277 to 281 of ITTOIA 2005 and section 34 above (lease premiums) are not to apply in relation to a premium paid in respect of a grant of a lease where the grant constitutes a disposal of an asset for the purposes of section 774A(2)(c) or 774C(2)(a).

Textual Amendments

- F429** Words in s. 774G(3)(a) substituted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 6(2)(a)
- F430** S. 774G(3)(a)(ii) and preceding word inserted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 6(2)(b)
- F431** Words in s. 774G(3)(c) substituted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 6(3)
- F432** S. 774G(5A) inserted (19.7.2007) by Finance Act 2007 (c. 11), Sch. 5 paras. 6(4), 7(6)

Other provisions

775 Sale by individual of income derived from his personal activities.

F433

Textual Amendments

- F433** S. 775 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 182, Sch. 3 Pt. 1 (with Sch. 2)

[^{F434}775A] Transfers of rights to receive annual payments

- (1) This section applies in any case where—
- a person sells or transfers the right to receive an annual payment to which this section applies (see subsection (4)), and
 - the consideration (if any) for the sale or transfer would not, apart from this section, be chargeable to tax.
- (2) In any such case, tax is charged—
- in the case of income tax, under this section; or
 - in the case of corporation tax, under Case III of Schedule D.
- (3) Where this section applies—
- the tax is charged on an amount equal to the market value of the right to receive the annual payment;
 - the tax is charged for the chargeable period in which the sale or transfer takes place;
 - the person liable for the tax is the person who sells or transfers the right to the annual payment.
- (4) This section applies to any annual payment other than—

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- (a) an annual payment under a life annuity;
 - (b) an annual payment under a pension annuity;
 - (c) an annual payment to which section 347A applies [^{F435}(certain annual payments not to form part of the income of a company for corporation tax purposes)];
 - (d) an annual payment in respect of which, by virtue of section 727 of ITTOIA 2005 (payments by individuals arising in UK), no liability to income tax arises under Part 5 of that Act.
- (5) This section applies in relation to part of an annual payment as it applies in relation to the whole of an annual payment.
- (6) For the purposes of this section, a sale or transfer of all rights under an agreement for annual payments, or under an annuity, is a sale or transfer of the rights to each individual payment under the agreement or annuity.
- (7) In this section—
“life annuity” means—
(a) a life annuity, as defined in section 657(1); or
(b) a life annuity, as defined in section 473(2) of ITTOIA 2005;
“pension annuity” means an annuity which is pension income within the meaning of Part 9 of ITEPA 2003 (see section 566(2) of that Act).]

Textual Amendments

F434 S. 775A inserted (with effect in accordance with Sch. 7 para. 4(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 4(1)

F435 Words in s. 775A(4)(c) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 183 (with Sch. 2)

776 Transactions in land: taxation of capital gains.

^{M41}(1) This section is enacted to prevent the avoidance of tax by [^{F436}companies] concerned with land or the development of land.

- (2) This section applies wherever—
- (a) land, or any property deriving its value from land, is acquired with the sole or main object of realising a gain from disposing of the land; or
 - (b) land is held as trading stock; or
 - (c) land is developed with the sole or main object of realising a gain from disposing of the land when developed;

and any gain of a capital nature is obtained from the disposal of the land—

- (i) by the person acquiring, holding or developing the land, or by any connected person, or
- (ii) where any arrangement or scheme is effected as respects the land which enables a gain to be realised by any indirect method, or by any series of transactions, by any person who is a party to, or concerned in, the arrangement or scheme;

and this subsection applies whether any such person obtains the gain for himself or for any other person.

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- (3) Where this section applies, the whole of any such gain shall for all the purposes of the [F⁴³⁷Corporation Tax Acts] be treated—
- (a) as being income which arises when the gain is realised ^{F⁴³⁸} . . . ; and
 - (b) subject to the following provisions of this section, as being income of the [F⁴³⁹company by which] the gain is realised.

[F⁴⁴⁰(3A) The gain treated as income shall be charged—

- (a) ^{F⁴⁴¹}
- (b) to corporation tax as profits or gains under Case VI of Schedule D for the accounting period in which the gain is realised.

(3B) ^{F⁴⁴²}]

- (4) For the purposes of this section—
- (a) land is disposed of if, by any one or more transactions, or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land, or control over the land, is effectually disposed of; and
 - (b) references in subsection (2) above to the acquisition or development of property with the sole or main object of realising the gain from disposing of the land shall be construed accordingly.
- (5) For those purposes—
- (a) where, whether by a premature sale or otherwise, a person directly or indirectly transmits the opportunity of making a gain to another person, that other person’s gain is obtained for him by the first-mentioned person; and
 - (b) any number of transactions may be regarded as constituting a single arrangement or scheme if a common purpose can be discerned in them, or if there is other sufficient evidence of a common purpose.
- (6) For the purposes of this section, such method of computing a gain shall be adopted as is just and reasonable in the circumstances, taking into account the value of what is obtained for disposing of the land, and allowing only such expenses as are attributable to the land disposed of; and in applying this subsection—
- (a) where a freehold is acquired and the reversion is retained on disposal, account may be taken of the way in which the [F⁴⁴³profits] under ^{F⁴⁴⁴} . . . Case I of Schedule D of a [F⁴⁴⁵company] dealing in land are computed in such a case; or
 - (b) account may be taken of the adjustments to be made in computing such [F⁴⁴³profits] under [F⁴⁴⁶F⁴⁴⁷ . . . subsections (2) and (3) of section 99 above].
- In the application of this subsection to Scotland, “freehold” means the [F⁴⁴⁸interest] of the owner, and “reversion” means the interest of the landlord in property subject to a lease.
- (7) Subsection (2)(c) above shall not apply to so much of any gain as is fairly attributable to the period, if any, before the intention to develop the land was formed, and which would not fall under paragraph (a) or (b) of that subsection; and in applying this subsection account shall be taken of the treatment under ^{F⁴⁴⁹} . . . Case I of Schedule D of a [F⁴⁵⁰company which] appropriates land as trading stock.
- (8) If all or any part of the gain accruing to any person is derived from value, or an opportunity of realising a gain, provided directly or indirectly by [F⁴⁵¹another person which is a company], whether or not put at the disposal of the first-mentioned person,

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subsection (3)(b) above shall apply to the gain, or that part of it, with the substitution of [F⁴⁵²that company] for the person by whom the gain was realised.

(9) F⁴⁵³

(10) Where—

- (a) there is a disposal of shares in—
 - (i) a company which holds land as trading stock; or
 - (ii) a company which owns directly or indirectly 90 per cent. or more of the ordinary share capital of another company which holds land as trading stock; and
- (b) all the land so held is disposed of—
 - (i) in the normal course of its trade by the company which held it, and
 - (ii) so as to procure that all opportunity of profit in respect of the land arises to that company,

then this section shall not by virtue of subsection (2)(i) above apply to any gain to the holder of shares as being a gain on property deriving value from that land (but without prejudice to any liability under subsection (2)(ii) above).

(11) Where a [F⁴⁵⁴company][F⁴⁵⁵which] considers that paragraph (a) or (c) of subsection (2) above may apply as respects a gain of a capital nature which that [F⁴⁵⁴company] has obtained from the disposal of land, or which [F⁴⁵⁶it] would obtain from a proposed disposal of land, supplies to the inspector to whom [F⁴⁵⁶it] makes [F⁴⁵⁷its] return of income written particulars showing how the gain has arisen or would arise—

- (a) the inspector shall, within 30 days from his receipt of the particulars, notify that [F⁴⁵⁴company] whether or not he is satisfied that, in the circumstances as described in the particulars, the gain will not, or would not, be chargeable to tax on that [F⁴⁵⁴company] under this section; and
- (b) if the inspector notifies that [F⁴⁵⁴company] that he is so satisfied, the gain shall not be chargeable on that [F⁴⁵⁴company] under this section.

(12) If the particulars given under this section with respect to the gain are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the inspector, any notification given by the inspector under subsection (11) above shall be void.

(13) In this section—

- (a) references to the land include references to all or any part of the land, and “land” includes buildings, and any estate or interest in land or buildings;
- (b) references to property deriving its value from land include—
 - (i) any shareholding in a company, or any partnership interest, or any interest in settled property, deriving its value directly or indirectly from land, and
 - (ii) any option, consent or embargo affecting the disposition of land;and for the purposes of this section any question whether a person is connected with another shall be determined in accordance with section 839.

(14) This section shall apply to all persons, whether resident in the United Kingdom or not, if all or any part of the land in question is situated in the United Kingdom.

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Textual Amendments

- F436** Word in s. 776(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(2)* (with Sch. 2)
- F437** Words in s. 776(3) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(3)(a)* (with Sch. 2)
- F438** Words in s. 776(3)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 312(2), Sch. 3* (with Sch. 2)
- F439** Words in s. 776(3)(b) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(3)(b)* (with Sch. 2)
- F440** S. 776(3A)(3B) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 312(3)* (with Sch. 2)
- F441** S. 776(3A)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(4), Sch. 3 Pt. 1* (with Sch. 2)
- F442** S. 776(3B) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(5), Sch. 3 Pt. 1* (with Sch. 2)
- F443** Words in s. 776(6)(a)(b) substituted (31.7.1998) by *Finance Act 1998 (c. 6), s. 46(3)(a), Sch. 7 para. 1*
- F444** Words in s. 776(6)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(6)(a)(i), Sch. 3 Pt. 1* (with Sch. 2)
- F445** Word in s. 776(6)(a) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(6)(a)(ii)* (with Sch. 2)
- F446** Words in s. 776(6)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 312(4)(b)* (with Sch. 2)
- F447** Words in s. 776(6)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(6)(b), Sch. 3 Pt. 1* (with Sch. 2)
- F448** Word in s. 776(6) substituted (S.) (28.11.2004) by *Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), Sch. 12 para. 50(4); S.S.I. 2003/456, art. 2*
- F449** Words in s. 776(7) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(7)(a), Sch. 3 Pt. 1* (with Sch. 2)
- F450** Words in s. 776(7) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(7)(b)* (with Sch. 2)
- F451** Words in s. 776(8) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(8)(a)* (with Sch. 2)
- F452** Words in s. 776(8) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(8)(b)* (with Sch. 2)
- F453** S. 776(9) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(9), Sch. 3 Pt. 1* (with Sch. 2)
- F454** Words in s. 776(11) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(10)(a)* (with Sch. 2)
- F455** Word in s. 776(11) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(10)(b)* (with Sch. 2)
- F456** Words in s. 776(11) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(10)(c)* (with Sch. 2)
- F457** Word in s. 776(11) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3), Sch. 1 para. 184(10)(d)* (with Sch. 2)

Marginal Citations

- M41** Source—1970 s.488; 1979(C) Sch.7

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777 Provisions supplementary to [F458 section 776].

- ^{M42}(1) This section has effect to supplement [F459 section 776].
- (2) In applying [F460 section 776 and this section] account shall be taken of any method, however indirect, by which—
- (a) any property or right is transferred or transmitted; or
 - (b) the value of any property or right is enhanced or diminished;
- and accordingly the occasion of the transfer or transmission of any property or right, however indirect, and the occasion when the value of any property or right is enhanced, may be an occasion when, under [F461 section 776], tax becomes chargeable.
- (3) Subsection (2) above applies in particular—
- (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration; and
 - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning share capital or other rights in a company or any partnership or interest in settled property; and
 - (c) to the creation of any option or consent or embargo affecting the disposition of any property or right, and to the consideration given for the option, or for the giving of the consent or the release of the embargo; and
 - (d) to the disposal of any property or right on the winding up, dissolution or termination of any company, partnership or trust.
- (4) In ascertaining for the purposes of [F462 section 776 and this section] the intentions of any person, the objects and powers of any company, partners or trustees, as set out in any memorandum, articles of association or other document, shall not be conclusive.
- (5) In order to ascertain whether and to what extent the value of any property or right is derived from any other property or right, value may be traced through any number of companies, partnerships and trusts, and the property held by any company, partnership or trust shall be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.
- (6) In applying [F463 section 776 and this section]—
- (a) any expenditure or receipt or consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances;
 - (b) all such valuations shall be made as are appropriate to give effect to [F464 section 776].
- (7) For the purposes of [F465 section 776 and this section] partners, or the trustees of settled property, or personal representatives, may be regarded as persons distinct from the individuals or other persons who are for the time being partners or trustees or personal representatives.
- (8) Where [F466 a company] is assessed to [F467 corporation tax under section 776] in respect of consideration receivable by another person—
- (a) [F468 it] shall be entitled to recover from that other person any part of that tax which [F468 it] has paid; and
 - (b) if any part of that tax remains unpaid at the expiration of six months from the date when it became due and payable, it shall be recoverable from that other person as though he were [F469 the company] assessed, but without prejudice to the right to recover it from [F469 the company] actually assessed;

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and for the purposes of paragraph (a) above the Board or an inspector shall on request furnish a certificate specifying the amount of income in respect of which tax has been paid, and the amount of tax so paid; and the certificate shall be conclusive evidence of any facts stated in it.

F470

(9) ^{F471}

(10) [^{F472}Section 776 has] effect subject to [^{F473}Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor)] and to any other provision of the Tax Acts deeming income to belong to a particular person.

(11) Where under section 776(2)(c) any [^{F474}company] is charged to tax on the realisation of a gain, and the computation of the gain proceeded on the footing that the land or some other property was appropriated at any time as trading stock, that land or other property shall be treated on that footing also for the purposes of section [^{F475}161 of the 1992] Act (property becoming or ceasing to be stock in trade).

^{F476}(12) Where under section 776(8) the company charged to corporation tax is not the person (“P”) by whom the gain was realised and the tax has been paid, then for the purposes of sections 37 and 39 of the 1992 Act (profits taxable as income excluded from tax on chargeable gains) P shall be regarded as having been charged to that tax.]

(13) For the purposes of [^{F477}section 776 [^{F478}of this Act and Chapter 3 of Part 13 of ITA 2007] and this section]—

[^{F479}“capital”, in relation to a gain, means that, apart from section 776, the gain does not fall to be included in any calculation of income for [^{F480}purposes of the Tax Acts];]

“company” includes any body corporate; and

“share” includes stock;

F481

Textual Amendments

F458 Words in s. 777 sidenote substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 185\(13\)](#) (with [Sch. 2](#))

F459 Words in s. 777(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 185\(2\)](#) (with [Sch. 2](#))

F460 Words in s. 777(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 185\(3\)\(a\)](#) (with [Sch. 2](#))

F461 Words in s. 777(2) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 185\(3\)\(b\)](#) (with [Sch. 2](#))

F462 Words in s. 777(4) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 185\(4\)](#) (with [Sch. 2](#))

F463 Words in s. 777(6) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 185\(5\)\(a\)](#) (with [Sch. 2](#))

F464 Words in s. 777(6)(b) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 185\(5\)\(b\)](#) (with [Sch. 2](#))

F465 Words in s. 777(7) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 185\(6\)](#) (with [Sch. 2](#))

F466 Words in s. 777(8) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 185\(7\)\(a\)](#) (with [Sch. 2](#))

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- F467** Words in s. 777(8) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(7)(b)** (with Sch. 2)
- F468** Words in s. 777(8)(a) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(7)(c)** (with Sch. 2)
- F469** Words in s. 777(8)(b) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(7)(d)** (with Sch. 2)
- F470** Words in s. 777(8) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(7)(e), Sch. 3 Pt. 1** (with Sch. 2)
- F471** S. 777(9) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(8), Sch. 3 Pt. 1** (with Sch. 2)
- F472** Words in s. 777(10) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(9)** (with Sch. 2)
- F473** Words in s. 777(10) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by **Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 313(3)** (with Sch. 2)
- F474** Word in s. 777(11) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(10)** (with Sch. 2)
- F475** Words in s. 777(11)(12) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by **Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 14(51)** (with ss. 60, 101(1), 171, 201(3))
- F476** S. 777(12) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(11)** (with Sch. 2)
- F477** Words in s. 777(13) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(12)(a)** (with Sch. 2)
- F478** Words in s. 777(13) inserted (retrospective to 6.4.2007 and with effect in accordance with art. 1(2) of the amending S.I.) by **The Income Tax Act 2007 (Amendment) (No. 2) Order 2009 (S.I. 2009/2859), arts. 1, 2(3)(a)**
- F479** S. 777(13): definition of "capital" substituted for definition of "capital amount" (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by virtue of **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(12)(b)** (with Sch. 2)
- F480** S. 777(13): words in definition of "capital" substituted (retrospective to 6.4.2007 and with effect in accordance with art. 1(2) of the amending S.I.) by **The Income Tax Act 2007 (Amendment) (No. 2) Order 2009 (S.I. 2009/2859), arts. 1, 2(3)(b)**
- F481** Words in s. 777(13) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(12)(c), Sch. 3 Pt. 1** (with Sch. 2)

Marginal Citations

M42 Source—1970 s.489; 1979(C) Sch.7

778 Power to obtain information.

- ^{M43}(1) The Board or an inspector may by notice require any person to furnish them within such time as the Board or the inspector may direct (not being less than 30 days) with such particulars as the Board or the inspector think necessary for the purposes of [^{F482}section 776].
- (2) The particulars which a person must furnish under this section, if he is required by a notice from the Board or the inspector so to do, include particulars—
- as to transactions or arrangements with respect to which he is or was acting on behalf of others;
 - as to transactions or arrangements which in the opinion of the Board or the inspector should properly be investigated for the purposes of [^{F483}section 776]

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notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under [F484that section]; and

- (c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in the notice.

(3) Notwithstanding anything in subsection (2) above, a solicitor—

- (a) shall not be deemed for the purposes of paragraph (c) of that subsection to have taken part in any transaction or arrangement by reason only that he has given professional advice to a client in connection with the transaction or arrangement, and
- (b) shall not, in relation to anything done by him on behalf of a client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client.

Textual Amendments

F482 Words in s. 778(1) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 186\(a\)](#) (with [Sch. 2](#))

F483 Words in s. 778(2)(b) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 186\(b\)\(i\)](#) (with [Sch. 2](#))

F484 Words in s. 778(2)(b) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 186\(b\)\(ii\)](#) (with [Sch. 2](#))

Modifications etc. (not altering text)

C52 See [S.I.1989 No.1343 \(N.I.14\)](#) Sch.1 para.38(3) for construction in the case of a solicitor who is an officer or employee of a recognised body.

Marginal Citations

M43 Source—1970 s.490

779 Sale and leaseback: limitation on tax reliefs.

^{M44}(1) If land or any estate or interest in land is transferred from one person to another and—

- (a) as a result of a lease of the land or any part of the land granted at that time or subsequently by the transferee to the transferor, or
- (b) as a result of any other transaction or series of transactions affecting the land or any estate or interest in the land,

the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to pay any rent under a lease of the land or any part of the land, this section shall apply to all rent due under the lease from the transferor, or from any person who is associated with the transferor.

(2) If—

- (a) land or any estate or interest in land is transferred from one person to another, and
- (b) as a result of any transaction or series of transactions affecting the land or any estate or interest in the land, the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to make any payment (other than rent under a lease) for which any relevant

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tax relief is available, being a payment by way of rentcharge on the land or any part of the land or a payment in any other way connected with the land, then this section shall apply to all such payments under the rentcharge or other transaction due from the transferor, or from any person who is associated with the transferor.

(3) The references in subsections (1) and (2) above to the transfer of an estate or interest in land include references to—

- (a) the granting of a lease or any other transaction involving the creation of a new estate or interest in the land;
- (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease; and
- (c) any transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner, or one of the owners, before and after the carrying out of the transaction or transactions, but another person becomes or ceases to become one of the owners;

and in relation to any such transaction or series of transactions any person who is an owner before the carrying out of the transaction or transactions, and is not the sole owner thereafter, shall be regarded for the purposes of this section as a transferor.

(4) A deduction by way of any relevant tax relief, being a deduction in respect of rent or of any other payment to which this section applies, shall not exceed the commercial rent for the period for which the rent or other payment is made of the land in respect of which that payment is made.

(5) If—

- (a) under subsection (4) above part of a payment which would otherwise be allowable as a deduction by way of any relevant tax relief is not so allowable, and
- (b) one or more subsequent payments are made by the transferor, or a person who is associated with the transferor, under the lease or other transaction,

that part of the first-mentioned payment may be carried forward and treated for the purposes of any such deduction by way of tax relief as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.

(6) For the purposes of subsection (4) above—

- (a) if more than one payment is made for the same period the payments shall be taken together;
- (b) if payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;
- (c) the preceding references to payments include references to parts of payments which under subsection (5) above are treated as if made at a time subsequent to that at which they were made, and to the extent that a part of a payment so carried forward under that subsection is not so allowable as a deduction by way of tax relief, it may again be carried forward under that subsection;
- (d) so much of any payment as is in respect of services or the use of assets or rates usually borne by the tenant shall be excluded, and in determining the amount to be so excluded provisions in any lease or agreement fixing the payments or parts of payments which are in respect of services or the use of assets may be overridden.

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- (7) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment was made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).
- (8) For the purposes of making a comparison under subsection (4) above between a payment consisting of rent under a lease (“the actual lease”), or such payments taken together, and the commercial rent of the land, “commercial rent” shall mean the rent which might be expected to be paid under a lease of the land negotiated in the open market at the time when the actual lease was created, being a lease which is of the same duration as the actual lease, which is, as respects liability for maintenance and repairs, subject to the terms and conditions of the actual lease and which provides for rent payable at uniform intervals and—
- (a) at a uniform rate, or
 - (b) if the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for any year is never less than the amount payable for any previous year), a rent which progresses by gradations proportionate to those provided by the actual lease.
- (9) For the purpose of making a comparison under subsection (4) above between a payment which does not consist of rent under a lease (or such a payment taken together with other payments) and the commercial rent of the land, “commercial rent” shall mean the rent which might be expected to be paid under a tenant’s repairing lease negotiated in the open market at the time when the transaction was effected under which the payment or payments became due, being—
- (a) where the period over which payments are to be made under that transaction is not less than 200 years, or the obligation to make such payments is perpetual, a lease for 200 years; and
 - (b) where that period is less than 200 years, a lease which is of the same duration as that period.
- (10) In this section references to rent under a lease include references to
- [^{F485}(a)] rent which the person entitled to the lease is under subsection (4), (5) or (6) of section 37 [^{F486}or under section 37A] or under section 87 [^{F487}or 87A] treated, for any purpose, as paying in respect of land comprised in the lease, [^{F488}and
 - (b) expenses which the tenant under the lease is treated as incurring in respect of the land subject to the lease under sections 61 to 67 or 292 to 297 of ITTOIA 2005,]
- and such rent shall be treated for the purposes of this section as having been paid from day to day as it has become due [^{F489}and such expenses shall be treated for those purposes as having been paid as soon as they have been incurred.]
- (11) For the purposes of this section the following persons shall be deemed to be associated with one another, that is—
- (a) the transferor in any such transaction as is described in subsection (1) or (2) above, and the transferor in another such transaction, if those two persons are acting in concert, or if the two transactions are in any way reciprocal, and any person who is an associate of either of those associated transferors;

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- (b) any two or more bodies corporate participating in, or incorporated for the purposes of, a scheme for the reconstruction of any body or bodies corporate or for the amalgamation of any two or more bodies corporate;
- (c) any persons who are associates as defined in section 783(10).

(12) In this section—

“asset” means any description of property or rights other than land or an interest in land;

“lease” includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined; and in relation to such land, expressions in this section relating to interests in land and their disposition shall be construed accordingly;

“rent” includes any payment made under a lease; and

“tenant’s repairing lease” means a lease where the lessee is under an obligation to maintain and repair the whole, or substantially the whole, of the premises comprised in the lease.

(13) For the purposes of this section the following are deductions by way of relevant tax relief, that is to say—

- (a) a deduction in computing profits or gains chargeable under Schedule A ^{F490} . . . ;
- ^{F491}(aa) a deduction in calculating the profits of a UK property business;
- (b) a deduction in computing [^{F492}profits] or losses of a trade, profession or vocation for the purposes of tax;
- (c) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section ^{F493} . . . 396;
- ^{F494}(ca) a deduction in computing profits or other income or gains chargeable to income tax under or by virtue of any provision to which [^{F495}section 1016 of ITA 2007] applies, or in computing any loss for which relief is allowable under [^{F496}section 152 of ITA 2007];
- (d) [^{F497}a deduction] under section 75 or 76;
- (e) [^{F498}a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses)] or allowable in computing losses in an employment for tax purposes;
- (f) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.

(14) This section shall not apply if the transfer described in subsection (1) or (2) above was on or before 14th April 1964.

Textual Amendments

- F485** Words in s. 779(10) renumbered as s. 779(10)(a) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 314(2)(a)** (with [Sch. 2](#))
- F486** Words in s. 779(10)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 314(2)(b)** (with [Sch. 2](#))
- F487** Words in s. 779(10)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 314(2)(c)** (with [Sch. 2](#))

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- F488** S. 779(10)(b) and preceding word inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 314\(2\)\(d\)](#) (with Sch. 2)
- F489** Words in s. 779(10) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 314\(2\)\(e\)](#) (with Sch. 2)
- F490** Words in s. 779(13)(a) repealed (with effect in accordance with s. 39(4)(5) of the repealing Act) by [Finance Act 1995 \(c. 4\), Sch. 6 para. 27, Sch. 29 Pt. 8\(1\)](#), Note
- F491** S. 779(13)(aa) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 314\(3\)\(a\)](#) (with Sch. 2)
- F492** Words in s. 779(13)(b) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\), Sch. 7 para. 1](#)
- F493** Words in s. 779(13)(c) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 314\(3\)\(b\), Sch. 3](#) (with Sch. 2)
- F494** S. 779(13)(ca) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 314\(3\)\(c\)](#) (with Sch. 2)
- F495** Words in s. 779(13)(ca) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 187\(a\)](#) (with Sch. 2)
- F496** Words in s. 779(13)(ca) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 187\(b\)](#) (with Sch. 2)
- F497** Words in s. 779(13)(d) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\), art. 2, Sch. para. 32\(2\)](#)
- F498** Words in s. 779(13)(e) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), Sch. 6 para. 101](#) (with Sch. 7)

Modifications etc. (not altering text)

- C53** S. 779 restricted (11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 23](#)
- C54** S. 779 excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\), s. 149\(1\)\(f\), Sch. 7 para. 22](#) (with s. 43(6))
- C55** S. 779 excluded (12.1.2000) by [Greater London Authority Act 1999 \(c. 29\), s. 425\(2\), Sch. 33 para. 13\(1\); S.I. 1999/3434, art. 2](#)
- C56** S. 779(1)(2) excluded (19.9.1994) by [Coal Industry Act 1994 \(c. 21\), s. 68\(4\), Sch. 4 para. 24\(8\)](#) (with s. 40(7)); [S.I. 1994/2189, art. 2, Sch.](#)
- C57** S. 779(1)(2) excluded (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\), Sch. 3 para. 10](#)

Marginal Citations

- M44** Source—1970 s.491

780 Sale and leaseback: taxation of consideration received.

^{M45}(1) If, in any case where a person (“the lessee”) who is a lessee of land under a lease having not more than 50 years to run (“the original lease”) is entitled in respect of the rent under the lease to a deduction by way of tax relief which is a relevant tax relief for the purposes of section 779—

- (a) the lessee assigns the original lease to another person, or surrenders it to his landlord, for a consideration which apart from this section would not be taxable otherwise than as capital in the hands of the lessee, and
- (b) there is granted or assigned to the lessee another lease (“the new lease”) of or including the whole or any part of the land which was the subject of the original lease for a term not exceeding 15 years;

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then, subject to the following provisions of this section, the provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply in relation to the rent under the new lease, and for the purposes of the Tax Acts a proportion of the consideration received by the lessee shall be treated not as a capital receipt but in accordance with subsection (3) below.

(2) For the purposes of this section—

- (a) if the aggregate of the rent payable under the new lease in respect of any rental period ending on a date falling before the 15th anniversary of the date on which the term of the new lease begins is greater than the aggregate of the rent payable under the new lease in respect of the period of equal duration beginning on the day following that date, then unless the term of the new lease would be treated as ending on an earlier date by virtue of paragraph (b) below, that term shall be treated as ending on that date;
- (b) if under the terms of the new lease—
 - (i) the lessor of the lessee has power to determine the new lease at a time before the expiry of the term for which it was granted, or
 - (ii) the lessee has power to vary his obligations under the new lease so as to reduce the rent which he would otherwise have to pay or in any other manner beneficial to him,

then, unless the term of the new lease would be treated as ending on an earlier date by virtue of paragraph (a) above, that term shall be treated as ending on the earliest date with effect from which, in exercise of that power, the lessor or the lessee could determine the new lease or, as the case may be, the lessee could so vary his obligations;

and in any case where a rentcharge payable by the lessee is secured on the whole or any part of the property which is the subject of the new lease, the rent payable under the new lease shall be treated for the purposes of paragraphs (a) and (b) above as equal to the aggregate of the rentcharge and the rent payable under the terms of that lease.

(3) Subject to the following provisions of this section, the proportion of the consideration received by the lessee as mentioned in subsection (1) above, or of any instalment of that consideration, which for the purposes of the Tax Acts is to be treated not as a capital receipt but in accordance with this subsection shall be determined by the formula—

$$\frac{16 - N}{15}$$

where N is the term of the new lease expressed in years or, if that term is less than a year, where N is 1; and that proportion shall be treated for the purposes of the Tax Acts—

- (a) as a receipt of a trade, profession or vocation, if the rent payable by the lessee under the new lease is allowable as a deduction in computing [^{F499}profits] or losses of a trade, profession or vocation for the purposes of tax and if the consideration is received by the lessee in the course of that trade, profession or vocation; and
- (b) in any other case, as [^{F500}an amount chargeable to tax in accordance with subsection (3A)].

[^{F501}(3A) The amount shall be charged—

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- (a) to income tax, or
 - (b) to corporation tax as a profit or gain under Case VI of Schedule D.
- (3B) The income tax charged by virtue of subsection (3A)(a) above shall be charged on the full amount of the proportion of the consideration concerned arising in the year of assessment; and the person liable for any tax so charged is the lessee.]
- [^{F502}(3C) An amount charged to income tax by virtue of subsection (3A)(a) above is treated for income tax purposes as an amount of income.]
- (4) In any case where the property which is the subject of the new lease does not include the whole of the property which was the subject of the original lease, the consideration received by the lessee shall be treated for the purposes of subsection (3) above as reduced to that portion of the consideration which is reasonably attributable to such part of the property which was the subject of the original lease as consists of, or is included in, the property which is the subject of the new lease.
- (5) *Schedule 2 shall have effect for the purposes of giving relief, on a claim being made in that behalf, from any increase in an individual's liability to income tax which is attributable to any amount being treated, by virtue of subsection (3) above, as an income receipt for a single year of assessment rather than as a series of such receipts during the term of the new lease; and in the application of that Schedule by virtue of this subsection for the definitions of "chargeable sum" and "relevant period" there shall be substituted the following definitions—*
- " "chargeable sum" means the amount in respect of which, by virtue of subsection (3) above, the claimant is chargeable to income tax for the year of assessment;"*
- " "relevant period", in relation to any chargeable sum, means the term of the new lease."*
- (6) Where by agreement with his landlord, the lessee varies the terms of the original lease in such a manner that, in return for such a consideration as is specified in subsection (1) (a) above, the lessee undertakes to pay, during a period ending not later than 15 years after the date on which the consideration, or if the consideration is paid in instalments, the last such instalment, is paid to the lessee, a rent greater than that payable under the original lease, he shall be treated for the purposes of this section—
- (a) as having surrendered the original lease for that consideration, and
 - (b) as having been granted a new lease for a term not exceeding 15 years but otherwise on the terms of the original lease as so varied.
- (7) References in this section to the lessee (other than in subsection (1)(a) above) include references to a person who is a partner or associate of the lessee or an associate of a partner of the lessee; and for the purposes of this section the expression "associate" shall be construed in accordance with 783(10).
- (8) Subject to subsection (7) above, expressions used in this section have the meanings assigned to them by section 24, and in subsection (2)(a) above "rental period" means a period in respect of which a payment of rent falls to be made, and for the purposes of that subsection, in a case where the rental period is a quarter or a month, each such period shall be treated as of equal duration.
- (9) The preceding provisions of this section shall not apply if the lessee had, before 22nd June 1971, a right enforceable at law or in equity to the grant of the new lease, but in any case where, apart from this subsection, those provisions would apply, no part

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of the rent paid under the new lease shall be treated as a payment of capital, and the provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply accordingly.

Textual Amendments

F499 Words in s. 780(3)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F500 Words in s. 780(3)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 315(2)** (with Sch. 2)

F501 S. 780(3A)(3B) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 315(3)** (with Sch. 2)

F502 S. 780(3C) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 188** (with Sch. 2)

Modifications etc. (not altering text)

C58 S. 780 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 23** (with s. 43)

Marginal Citations

M45 Source—1972 s.80

781 Assets leased to traders and others.

^{M46}(1) Subject to section 782, where—

- (a) a deduction by way of tax relief which is one of the kinds listed in subsection (4) below is allowable in respect of a payment made under a lease of an asset of any description, and
- (b) before, at or after the time when the payment is made, either—
 - (i) the person who made the payment has obtained or obtains a capital sum in respect of the lessee's interest in the lease, or
 - (ii) the lessor's interest in the lease, or any other interest in the asset, has belonged to an associate of the person who made the payment, and that associate has obtained a capital sum in respect of that interest,

the person obtaining that sum shall be charged [^{F503}to tax (in the case of corporation tax, under Case VI of Schedule D) for the chargeable period in which the sum is obtained] on an amount equal to the amount of the payment in respect of which tax relief is so allowed.

[^{F504}(1A) An amount charged to income tax under subsection (1) above is treated for income tax purposes as an amount of income.]

- (2) A person shall not be assessed to tax under subsection (1) above on any amount to the extent to which it exceeds the capital sum by reference to which he is so assessed.
- (3) Subsection (1) above shall not apply to payments under a lease created on or before 14th April 1964.
- (4) The kinds of deductions by way of tax relief to which subsection (1) above applies are as follows—
 - (a) a deduction in computing [^{F505}profits] or losses of a trade, profession or vocation for the purposes of tax;

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- [^{F506}(ab) a deduction in computing profits or other income or gains chargeable to income tax under or by virtue of any provision to which [^{F507}section 1016 of ITA 2007] applies, or in computing any loss for which relief is allowable under [^{F508}section 152 of ITA 2007];]
- (b) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section ^{F509} . . . 396;
- (c) [^{F510}a deduction] under section 75 or 76;
- (d) [^{F511}a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses)] or allowable in computing losses in an employment for tax purposes;
- (e) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.

(5) Where—

- (a) the deduction by way of tax relief mentioned in subsection (1)(a) above is a deduction in computing, for income tax purposes, profits or gains or losses of a trade, profession or vocation, or arising from woodlands, and
- (b) any part of the payments made under the lease by the person obtaining the capital sum is a payment in respect of which a deduction is not allowed for the reason that the whole or any part of the period in which the payment would fall to be allowed is not a period on the [^{F505}profits] of which income tax falls to be computed in respect of the trade, profession or vocation,

for the reference in subsection (2) above to the amount of the capital sum there shall be substituted a reference to that amount after deducting the amount of the payment in respect of which a deduction is not allowed for that reason.

- (6) So far as in respect of a capital sum any part of a payment allowed as a deduction by way of tax relief of a kind to which this section applies is taken into account in making an assessment under subsection (1) above, that part of the payment shall be left out of account in determining whether any and if so what amount should be assessed by reference to any other capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.
- (7) There shall be made all such adjustments of tax, whether by way of making assessments or by repayment of tax, as are required after the making of any such payment as is described in subsection (1) above to give effect to the charge under that subsection in respect of a sum obtained before the making of the payment.
- (8) Notwithstanding anything in the Tax Acts limiting the time within which an assessment may be made or a claim for relief may be admitted any such adjustment may be made, by making an assessment or otherwise, at any time [^{F512}within the period specified in subsection (8A) below].

[^{F513}(8A) The period mentioned in subsection (8) above is—

- (a) in the case of adjustments with respect to income tax, the period ending with the fifth anniversary of the 31st January next following the year of assessment in which the payment was made;
- (b) in the case of adjustments with respect to corporation tax, the period of six years beginning at the end of the accounting period in which the payment was made.]

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- (9) This section shall not apply if the capital sum obtained in respect of the lessee's interest in a lease constituting a hire-purchase agreement for machinery or plant is a sum which is required to be brought into account as the whole or part of the disposal value of the machinery or plant under [^{F514}section 68 of the Capital Allowances Act].

Textual Amendments

- F503** Words in s. 781(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 316\(2\)](#) (with [Sch. 2](#))
- F504** [S. 781\(1A\)](#) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 189\(2\)](#) (with [Sch. 2](#))
- F505** Words in s. 781(4)(a)(5)(b) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), s. 46(3)(a), [Sch. 7 para. 1](#)
- F506** [S. 781\(4\)\(ab\)](#) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 316\(3\)](#) (with [Sch. 2](#))
- F507** Words in s. 781(4)(ab) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 189\(3\)\(a\)](#) (with [Sch. 2](#))
- F508** Words in s. 781(4)(ab) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 189\(3\)\(b\)](#) (with [Sch. 2](#))
- F509** Words in s. 781(4)(b) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 316\(4\)](#), [Sch. 3](#) (with [Sch. 2](#))
- F510** Words in s. 781(4)(c) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 2, [Sch. para. 33\(2\)](#)
- F511** Words in s. 781(4)(d) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 6 para. 102](#) (with [Sch. 7](#))
- F512** Words in s. 781(8) substituted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 21\(2\)](#)
- F513** [S. 781\(8A\)](#) inserted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 21\(3\)](#)
- F514** Words in s. 781(9) substituted (with effect in accordance with s. 579 of the amending Act) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 57](#)

Modifications etc. (not altering text)

- C59** [S. 781](#) modified (11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 19\(1\)-\(4\)](#)
- C60** [S. 781](#) excluded (11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 19\(6\)](#)
- C61** [S. 781](#) modified (19.9.1994) by [Coal Industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 18\(1\)](#) (with s. 40(7)); [S.I. 1994/2189](#), art. 2, [Sch.](#)
- C62** [S. 781](#) modified (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\)](#), [Sch. 3 para. 11\(1\)](#)
- C63** [S. 781](#) modified (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), s. 149(1)(f), [Sch. 7 para. 24\(1\)](#) (with s. 43)
- C64** [S. 781](#) excluded (12.1.2000) by [Greater London Authority Act 1999 \(c. 29\)](#), s. 425(2), [Sch. 33 para. 13\(2\)](#); [S.I. 1999/3434](#), art. 2
- C65** [S. 781](#) modified (8.6.2005) by [Railways Act 2005 \(c. 14\)](#), s. 60(2), [Sch. 10 paras. 8, 20](#); [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)
- C66** [S. 781](#) modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 13 paras. 16, 25](#)
- C67** See 1979(C) s.106 and [Sch.3 para.9](#)—amounts charged under s.781 to be excluded in computing capital gains.

Marginal Citations

- M46** Source—1970 s.492 (1)-(5), (7)-(9); 1971 [Sch.8 16\(7\)](#)

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782 Leased assets: special cases.

- ^{M47}(1) This section shall apply, and section 781 shall not apply, to payments—
- (a) which are allowable by way of deductions in computing the [^{F515}profits] or losses of a trade, and
 - (b) which are made under a lease of an asset which at any time before the creation of the lease was used for the purposes—
 - (i) of that trade; or
 - (ii) of another trade carried on by the person who at that time or later was carrying on the first-mentioned trade;
 and when so used was owned by the person carrying on the trade in which it was being used.

[^{F516}(1A) This section does not apply to a payment if or to the extent that, in the case of the lessee, it falls to be regarded in accordance with Chapter 6A of Part 2 of the Capital Allowances Act as a payment under a lease which is a long funding finance lease for the purposes of that Part.]

- (2) Subject to the following provisions of this section, the deduction allowable in computing the [^{F515}profits] or losses of the trade for the purposes of tax as respects any such payment shall not exceed the commercial rent of the asset for the period for which the payment was made.
- (3) If under subsection (2) above part of a payment which would otherwise be allowable as a deduction is not so allowable, and one or more subsequent payments are made by the same person under the same lease, that part of the first-mentioned payment may be carried forward and treated for the purposes of computing the [^{F515}profits] or losses of the trade for the purposes of tax as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.
- (4) For the purposes of subsection (2) above—
 - (a) if more than one payment is made for the same period the payments shall be taken together;
 - (b) if the payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;
 - (c) the preceding references to payments include references to parts of payments which under subsection (3) above are treated as if made at a time subsequent to that at which they were made;

and to the extent that a part of a payment carried forward under subsection (3) above is not allowable as a deduction it may again be carried forward under that subsection.

- (5) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment is made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).
- (6) For the purpose of making a comparison under subsection (2) above between a payment, or payments taken together, and the commercial rent of the asset, “commercial rent” shall mean the rent which might at the relevant time be expected to

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be paid under a lease of the asset for the remainder of the anticipated normal working life of the asset, being a rent payable at uniform intervals and at a uniform rate which would afford a reasonable return for its market value at the relevant time, having regard to the terms and conditions of the lease; and in this subsection—

“anticipated normal working life” means, in the case of any asset, the period which might be expected, when the asset is first put into use, to be going to elapse before it is finally put out of use as being unfit for further use, it being assumed that the asset is going to be used in the normal manner and to the normal extent, and is going to be so used throughout that period; and

“the relevant time” means the time when the lease was created under which the payment was made with which the commercial rent is to be compared.

- (7) If the asset is used at the same time partly for the purposes of the trade and partly for other purposes the commercial rent as defined in subsection (6) above shall be determined by reference to what would be paid for such a partial use of the asset.
- (8) This section shall not apply in relation to payments made under a lease created on or before 14th April 1964.
- (9) In this section references to the person carrying on a trade are references to the person carrying on the trade for the time being, and where at any time a person succeeds to a trade which until that time was carried on by another person, and by virtue of [F517 section 18 of ITTOIA 2005 or section 337(1) above (companies beginning or ceasing to carry on trade)] the trade is to be treated as discontinued, the trade shall, nonetheless, be treated as the same trade for the purposes of this section.
- (10) In this section references to a trade include references to a profession or vocation.

Textual Amendments

- F515** Words in s. 782(1)(a)(2)(3) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), s. 46(3)(a), [Sch. 7 para. 1](#)
- F516** [S. 782\(1A\)](#) inserted (with effect in accordance with [Sch. 9 para. 3\(3\)](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 9 para. 3\(2\)](#)
- F517** Words in s. 782(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 317](#) (with [Sch. 2](#))

Modifications etc. (not altering text)

- C68** [S. 782](#) excluded (11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 19\(5\)](#)
- C69** [S. 782](#) excluded (19.9.1994) by [Coal Industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 18\(2\)](#) (with s. 40(7)); [S.I. 1994/2189](#), art. 2, [Sch.](#)
- C70** [S. 782](#) excluded (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\)](#), [Sch. 3 para. 11\(2\)](#)
- C71** [S. 782](#) excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), s. 149(1)(f), [Sch. 7 para. 24\(2\)](#) (with s. 43)
- C72** [S. 782](#) excluded (12.1.2000) by [Greater London Authority Act 1999 \(c. 29\)](#), s. 425(2), [Sch. 33 para. 13\(1\)](#); [S.I. 1999/3434](#), art. 2

Marginal Citations

- M47** Source—1970 s.493; 1971 Sch.8 16(8)

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783 Leased assets: supplemental.

- ^{M48}(1) References in section 781 to a sum obtained in respect of the lessee's interest in a lease of an asset, or in respect of any other interest in an asset include—
- (a) in the case of a lessee's interest, references to sums representing the consideration in money or money's worth obtained on a surrender of the rights to the lessor, or on an assignment of the lease, or on creating a sublease or any other interest out of the lease; and
 - (b) references to any insurance moneys payable in respect of the asset, so far as payable to the owner of the interest in the asset.
- (2) Such references also include references to sums representing money or money's worth obtained by the person entitled to the interest by a transaction or series of transactions disposing of the asset, or of an interest in the asset, and in particular transactions which comprise arrangements under which the rights of the lessee under a lease of the asset are merged in any way with the rights of the lessor, or with any other rights as respects the asset, so far as the money or money's worth so obtained is attributable to the rights of the lessee under the lease.
- (3) References in section 781 to sums obtained in respect of any interest in an asset include references to money or money's worth so obtained in any transaction (including a transaction of the kind described in subsection (1) or (2) above) by way of consideration received by a person who is an associate of the person entitled to the interest in the asset.
- (4) If an interest in the asset is disposed of by any person to a person who is his associate, the person disposing of the interest shall (unless in fact he obtains a greater sum) be treated for the purposes of section 781 as having obtained in respect of the interest—
- (a) the value of the interest in the open market; or
 - (b) the value of the interest to the person to whom it is, in effect, transferred;
- whichever is the greater.
- (5) For the purposes of subsections (3) and (4) above a disposition may be direct or indirect and may be effected by any such transaction as is described in subsection (2) above.
- (6) For the purposes of sections 781 and 784 and this section any sum obtained by any persons carrying on a trade, profession or vocation in partnership in respect of an interest in an asset which is and continues to be used for the purposes of the trade, profession or vocation shall be regarded as apportionable between them in the shares in which they are then entitled to the profits of the trade, profession or vocation.
- (7) Subject to subsection (6) above, for those purposes a sum obtained by persons jointly entitled to an interest in an asset shall be apportionable according to their respective interests in the rights.
- (8) For those purposes, any payment in respect of which a deduction is allowable by way of tax relief which is made by persons carrying on a trade, profession or vocation in partnership shall be apportioned in such manner as may be just.
- (9) Where under this section any sum or payment falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more persons, any question which arises as to the manner in which the sum or payment is to be apportioned shall be determined, for the purposes of tax of all those persons—

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- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners unless all those persons agree that it shall be determined by the Special Commissioners;
 - (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct unless all those persons agree that it shall be determined by the Special Commissioners; and
 - (c) in any other case, by the Special Commissioners;
- and any such Commissioners shall determine the question in like manner as if it were an appeal, except that all those persons shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.
- (10) For the purposes of this section and in construing the expressions “associate” and “associated” in section 781 and this section, the following persons shall be deemed to be associated with each other, that is to say—
- (a) any individual and that individual’s [^{F518}spouse or civil partner], and any relative, or [^{F518}spouse or civil partner] of a relative, of that individual or that individual’s [^{F518}spouse or civil partner] (“relative” meaning, for this purpose, brother, sister, ancestor or lineal descendant);
 - (b) any person in his capacity of trustee of a settlement and any individual who in relation to the settlement is a settlor, and any person associated with that individual (“settlement” and “settlor” having, for this purpose, the meanings given by [^{F519}section 620 of ITTOIA 2005]);
 - (c) any person and a body of persons of which that person, or persons associated with him, or that person and persons associated with him, has or have control;
 - (d) any two or more bodies of persons associated with the same person by virtue of paragraph (c) above;
 - (e) in relation to a disposal by joint owners, the joint owners and any person associated with any of them.
- (11) In subsection (10) above “body of persons” includes a partnership and “control” has the meaning given by section 840.

Textual Amendments

F518 Words in s. 783(10)(a) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1), 98**

F519 Words in s. 783(10)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 318** (with Sch. 2)

Modifications etc. (not altering text)

C73 S. 783(2) restricted (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(2)**

C74 S. 783(4) excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(1)(a)(3)**

C75 S. 783(4) excluded (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), Sch. 10 paras. 8(2), **20(2)**; S.I. 2005/1444, art. 2(1), **Sch. 1**

C76 S. 783(4) excluded (22.7.2008) by Crossrail Act 2008 (c. 18), Sch. 13 paras. 16(2), **25(2)**

C77 See—s.756—s.783(11) applied for purposes of Part XVII Ch.IV (controlled foreign companies), s.798(10)—s.783(11) applied for purposes of s.798 (interest on certain overseas loans).

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Marginal Citations

M48 Source—1970 s.494

784 Leased assets subject to hire-purchase agreements.

- (1)^{M49} In the application of section 781 to a lease which constitutes a hire-purchase agreement, for the reference in subsection (2) of that section to the amount of the capital sum there shall, where that capital sum was obtained in respect of the lessee's interest in the lease constituting the hire-purchase agreement, be substituted references to the amount of the capital sum (adjusted, if necessary, under subsection (5) of that section) after deducting any capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee's interest.
- (2) In subsection (1) above "capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee's interest" means—
 - (a) so much of any payment made under the lease by the person obtaining the capital sum (or, where the capital sum was obtained by the personal representatives of a deceased person, so made by that deceased person) as is not a payment in respect of which a deduction is allowable by way of tax relief which is one of the kinds listed in subsection (4) of section 781, plus
 - (b) where the lessee's interest was assigned to the person obtaining the capital sum, any capital payment made by that person as consideration for the assignment.
- (3) If the amount to be deducted in pursuance of subsection (1) above exceeds the amount of the capital sum from which it is to be deducted, no charge shall arise under section 781(1) in respect of the capital sum.
- (4) If the capital sum represents the consideration for part only of the lessee's interest in the lease which constitutes a hire-purchase agreement, the amount to be deducted under subsection (1) above shall be such proportion of the capital expenditure which is still unallowed as is reasonable having regard to the degree to which the capital expenditure has contributed to the value of what is disposed of in return for the capital sum.
- (5) If more than one capital sum is, or is to be regarded as, obtained by the same person in respect of the lessee's interest in the lease which constitutes a hire-purchase agreement, then, so far as in respect of one of those capital sums any deduction is made in respect of capital expenditure in pursuance of subsection (1) above that capital expenditure shall be left out of account in applying subsections (1) and (3) above to any other such capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.
- (6)^{M50} In this section—

"hire-purchase agreement" means an agreement, other than a conditional sale agreement, under which—

 - (a) goods are bailed or, in Scotland, hired in return for periodical payments by the person to whom they are bailed or hired, and
 - (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—
 - (i) the exercise of an option to purchase by that person;
 - (ii) the doing of any other specified act by any party to the agreement;

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(iii) the happening of any other specified event; and

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

Marginal Citations

M49 Source—1970 s.495

M50 Source—Consumer Credit Act 1974 Sch.4 29

785 Meaning of “asset”, “capital sum” and “lease” for purposes of sections 781 to 784.

In sections 781 to 784—

“asset” means any description of property or rights other than land or an interest in land;

“capital sum” means any sum of money, or any money’s worth, except so far as it or any part of it is to be treated for the purposes of tax as a receipt to be taken into account in computing the [^{F520}profits] or losses of a trade, profession or vocation, or profits or gains or losses arising from woodlands, or is, apart from section 781, chargeable [^{F521}to income tax under or by virtue of any provision to which [^{F522}section 1016 of ITA 2007] applies or to corporation tax] under Case VI of Schedule D; and

“lease”, in relation to an asset, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset, and includes, in particular, any agreement or arrangement all or any of the payments under which represent instalments of, or payments towards, a purchase price.

Textual Amendments

F520 Words in s. 785 substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), Sch. 7 para. 1

F521 S. 785: words in definition of “capital sum” inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 319 (with Sch. 2)

F522 S. 785: words in definition of “capital sum” substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 190 (with Sch. 2)

[^{F523}785ZA] Restrictions on use of losses: leasing partnerships

- (1) This section applies for corporation tax purposes if—
- (a) a company carries on a business in respect of which the company is within the charge to corporation tax,
 - (b) the company carries on the business in partnership with other persons in an accounting period of the partnership,
 - (c) the business (“the leasing business”) is, on any day in that period, a business of leasing plant or machinery,

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- (d) the company incurs a loss in its notional business in any accounting period comprised (wholly or partly) in the accounting period of the partnership, and
 - (e) the interest of the company in the leasing business during the accounting period of the partnership is not determined on an allowable basis (see subsections (2) to (4)).
- (2) The interest of the company in the leasing business during the accounting period of the partnership is determined on an allowable basis if (and only if) the following condition is met.
- (3) The condition is met if, for the purposes of section 114(2),—
- (a) the company's share in the profits or loss of the leasing business for that period is determined wholly by reference to a single percentage, and
 - (b) the company's share in any relevant capital allowances for that period is determined wholly by reference to the same percentage.
- (4) For the purposes of this condition “profits” does not include chargeable gains.
- (5) The following restrictions apply in respect of so much of the loss incurred by the company in its notional business as derives from any relevant capital allowances (“the restricted part of the loss”).
- (6) Apart from by way of set off against any relevant leasing income, relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss.
- (7) If the leasing business is a trade, relief is not to be given to the company under section 393A(1) in respect of the restricted part of the loss.
- (8) The restricted part of the loss is not available for set off by way of group relief in accordance with section 403.
- (9) For the purpose of determining how much of a loss derives from any relevant capital allowances, the loss is to be calculated on the basis that any relevant capital allowances are the final amounts to be deducted.]

Textual Amendments

F523 Ss. 785ZA, 785ZB inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), s. 83(2)

[^{F523}785ZB] **Section 785ZA: definitions**

- (1) This section applies for the purposes of section 785ZA.
- (2) “Business of leasing plant or machinery” has the same meaning as in Part 3 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc).
- (3) “Lease” has the same meaning as in section 785A.
- (4) “Notional business”, in relation to a company, means the business—
 - (a) from which the company's share in the profits or loss of the leasing business is treated under section 114(2) as deriving for the purposes of the charge to corporation tax, and

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- (b) which is treated under that provision as carried on alone by the company for those purposes.
- (5) “Plant or machinery” has the same meaning as in Part 2 of the Capital Allowances Act.
- (6) “Relevant capital allowance” means an allowance under Part 2 of the Capital Allowances Act in respect of expenditure incurred on the provision of plant or machinery wholly or partly for the purposes of the leasing business.
- (7) “Relevant leasing income” means any income of the company's notional business deriving from any lease—
 - (a) which is a lease of plant or machinery, and
 - (b) which was entered into before the end of the accounting period of the company in which the loss in its notional business was incurred.
- (8) “Relevant loss relief provision” means any of the following provisions—
 - (a) section 392A (Schedule A losses),
 - (b) section 392B (losses from overseas property businesses),
 - (c) section 393 (trade losses),
 - (d) section 396 (Case VI losses).]

Textual Amendments

F523 Ss. 785ZA, 785ZB inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), s. 83(2)

[^{F524}785A Rent factoring of leases of plant or machinery

- (1) This section applies in any case where the following conditions are satisfied—
 - (a) a person (call him “P”) is entitled to receive rentals under a lease of plant or machinery,
 - (b) the rentals, so far as receivable by him, fall to be brought into account as income for the purpose of calculating his tax liability,
 - (c) P enters into arrangements for the transfer of his right to receive some or all of the rentals to another person,
 - (d) ^{F525}
- (2) In any such case, the [^{F526}market value of the rights transferred]—
 - (a) shall be treated for tax purposes as income of P,
 - (b) shall be taxable as rentals receivable by P under the lease (apart from any transfer of his right to receive some or all of the rentals), and
 - (c) shall be brought into account [^{F527}at the time of the transfer].

[But subsection (2) does not apply if and to the extent that any of the market value of ^{F528}(2A) the rights transferred is (apart from this section) brought into account—

- (a) as income, or
- (b) as a capital allowances disposal receipt.]

- (3) Any reference to the transfer from P to another person of a right to receive rentals includes a reference to any arrangement under which rental ceases to form part of the receipts taken into account as income for the purposes of calculating P’s tax liability.

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- (4) Where P is a partnership, any reference in this section to calculating P’s tax liability includes a reference to calculating the tax liability of the partners, notwithstanding that the partnership has legal personality.
- (5) A partnership has legal personality for the purposes of subsection (4) above if it is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.
- [The references in subsections (1)(c) and (3) to another person include any person in ^{F529}(5ZA) which P has an interest, including any partnership of which P is a member and the trustees of any trust of which P is a beneficiary.]
- [This section does not apply in so far as section 774B or 774D (structured finance ^{F530}(5A) arrangements) applies in relation to the arrangements mentioned in paragraph (c) of subsection (1) above as a result of the transfer mentioned in that paragraph.]
- [This section does not apply in relation to a relevant capital payment to which ^{F531}(5B) section 785B below or section 809ZA of ITA 2007 applies; and “relevant capital payment” here has the same meaning as in that section.]
- (6) In this section—
- “capital allowances disposal receipt” means a disposal receipt within the meaning of Part 2 of the Capital Allowances Act 2001 (see section 60 of that Act);
- “lease” includes an underlease, sublease, tenancy or licence and an agreement for any of those things;
- “tax liability” means liability to income tax or corporation tax.]

Textual Amendments

- F524** S. 785A inserted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 135\(1\)](#)
- F525** S. 785A(1)(d) omitted (with effect in accordance with [Sch. 22 para. 1\(6\)](#) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 22 para. 1\(2\)](#)
- F526** Words in s. 785A(2) substituted (with effect in accordance with [Sch. 22 para. 1\(6\)](#) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 22 para. 1\(3\)\(a\)](#)
- F527** Words in s. 785A(2)(c) substituted (with effect in accordance with [Sch. 22 para. 1\(6\)](#) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 22 para. 1\(3\)\(b\)](#)
- F528** S. 785A(2A) inserted (with effect in accordance with [Sch. 22 para. 1\(6\)](#) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 22 para. 1\(4\)](#)
- F529** S. 785A(5ZA) inserted (with effect in accordance with [Sch. 22 para. 1\(6\)](#) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 22 para. 1\(5\)](#)
- F530** S. 785A(5A) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\), Sch. 6 para. 7\(2\)](#)
- F531** S. 785A(5B) inserted (21.7.2008) by [Finance Act 2008 \(c. 9\), Sch. 20 para. 3](#)

[^{F532}785B] Plant and machinery leases: capital receipts to be treated as income

- (1) This section applies if—
- (a) there is an unconditional obligation, under a lease of plant or machinery or a relevant arrangement, to make a relevant capital payment (at any time), or
- (b) a relevant capital payment is made under such a lease or arrangement otherwise than in pursuance of such an obligation.

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- (2) The lessor is treated for corporation tax purposes as receiving income attributable to the lease of an amount equal to the amount of the capital payment.
- (3) The income is treated—
 - (a) if subsection (1)(a) applies, as income for the period of account in which there is first an obligation of the kind mentioned there, and
 - (b) if subsection (1)(b) applies, as income for the period of account in which the payment is made.]

Textual Amendments

F532 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

[^{F532}785C] Section 785B: interpretation

- (1) The expressions used in section 785B and this section are to be interpreted as follows.
- (2) “Capital payment” means any payment except one which, if made to the lessor—
 - (a) would fall to be included in a calculation of the lessor's income for corporation tax purposes, or
 - (b) would fall to be included in such a calculation but for section 502B (rental earnings under long funding finance lease).
- (3) “Lease” includes—
 - (a) a licence, and
 - (b) the letting of a ship or aircraft on charter or the letting of any other asset on hire,
 and “lessor” and “lessee” are to be read accordingly.
- (4) “Lease of plant or machinery” includes a lease of plant or machinery and other property but does not include—
 - (a) a lease where the income attributable to the lease received by the lessor (if any) would be chargeable to tax under Schedule A, or
 - (b) a lease of plant or machinery where the lessor has incurred what would (but for section 34A of the Capital Allowances Act) be qualifying expenditure (within the meaning of Part 2 of that Act) on the plant or machinery.
- (5) “Relevant arrangement” means any agreement or arrangement relating to a lease of plant or machinery, including one made before the lease is entered into or after it has ended (and, accordingly, “lessor” and “lessee” include prospective and former lessors and lessees).
- (6) A capital payment, in relation to a lease or relevant arrangement, is “relevant” if condition A or B is met (but this is subject to subsection (9)).
- (7) Condition A is that the capital payment is payable (or paid), directly or indirectly, by (or on behalf of) the lessee to (or on behalf of) the lessor in connection with—
 - (a) the grant, assignment, novation or termination of the lease, or
 - (b) any provision of the lease or relevant arrangement (including the variation or waiver of any such provision).

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- (8) Condition B is that rentals payable under the lease are less than (or payable later than) they might reasonably be expected to be if there were no obligation to make the capital payment (and the capital payment were not made).
- (9) A capital payment is not “relevant” if or to the extent that—
- (a) the capital payment reduces (or would but for section 536 of the Capital Allowances Act reduce) the amount of expenditure incurred by the lessor for the purposes of the Capital Allowances Act in respect of the plant or machinery in question,
 - (b) the capital payment is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question, or
 - (c) the capital payment would fall (or falls) to be brought into account by the lessor as a disposal receipt within the meaning of Part 2 of the Capital Allowances Act (see section 60(1) of that Act).
- (10) References to payment include the provision of value by any means other than the making of a payment, and accordingly—
- (a) references to the making of a payment include the passing of value (by any other means), and
 - (b) references to the amount of the payment include the value passed.]

Textual Amendments

F532 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

[^{F532}785D] Section 785B: lease of plant and machinery and other property

- (1) This section applies if section 785B applies in relation to a lease of plant or machinery and other property (see section 785C(4)).
- (2) The relevant capital payment is to be apportioned, on a just and reasonable basis, between—
 - (a) the plant and machinery, and
 - (b) the other property.
- (3) If the income (if any) received by the lessor that is attributable to any of the plant or machinery is chargeable to tax under Schedule A, treat that plant or machinery as falling within subsection (2)(b) (and not subsection (2)(a)).
- (4) Section 785B(2) has effect as if the reference to the amount of the capital payment were to such amount as is apportioned under subsection (2) in respect of the plant or machinery within subsection (2)(a).]

Textual Amendments

F532 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

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[^{F532}**785E**Section 785B: expectation that relevant capital payment will not be paid

- (1) This section applies for corporation tax purposes if—
 - (a) section 785B applies by virtue of subsection (1)(a) of that section, and
 - (b) at any time, the lessor reasonably expects that the relevant capital payment will not be paid (or will not be paid in full).
- (2) For the purposes of calculating the profits of the lessor, a deduction is allowed for the period of account which includes that time.
- (3) The amount of the deduction is equal to the amount reasonably expected not to be paid.
- (4) No other deduction is allowed in respect of the matters mentioned in subsection (1).]

Textual Amendments

F532 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

786 Transactions associated with loans or credit.

- ^{M51}(1) This section applies as respects any transaction effected with reference to the lending of money or the giving of credit, or the varying of the terms on which money is lent or credit is given, or which is effected with a view to enabling or facilitating any such arrangement concerning the lending of money or the giving of credit.
- (2) Subsection (1) above has effect whether the transaction is effected between the lender or creditor and the borrower or debtor, or between either of them and a person connected with the other or between a person connected with one and a person connected with the other.
- (3) If the transaction provides for the payment of any [^{F533}relevant annual payment], the payment shall be treated for all the purposes of the Tax Acts as if it were a payment of annual interest.
- [^{F534}(3A) In subsection (3) “relevant annual payment” means a payment which is not interest but is—
- (a) an annuity or other annual payment falling within Part 5 of ITTOIA 2005 and chargeable to income tax otherwise than as relevant foreign income; or
 - (b) an annuity or other annual payment chargeable to corporation tax under Case III of Schedule D.]
- (4) ^{F535}
- (5) If under the transaction a person assigns, surrenders or otherwise agrees to waive or forego income arising from any property (without a sale or transfer of the property) then, without prejudice to the liability of any other person, [^{F536} he shall be chargeable—
- (a) to income tax, or
 - (b) to corporation tax under Case VI of Schedule D,
- on a sum] equal to the amount of income assigned, surrendered, waived or foregone.

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- [^{F537}(5ZA) But subsection (5) above does not apply if the person mentioned in that subsection is, as a result of section 774B or 774D (structured finance arrangements), chargeable to tax on the amount of income assigned, surrendered, waived or forgone.]
- [^{F538}(5A) Income tax charged by virtue of subsection (5)(a) above shall be charged on the full amount of the income assigned, surrendered, waived or forgone in the year of assessment.]
- (6) If credit is given for the purchase price of any property, and the rights attaching to the property are such that, during the subsistence of the debt, the purchaser's rights to income from the property are suspended or restricted, he shall be treated for the purposes of subsection (5) above as if he had surrendered a right to income of an amount equivalent to the income which he has in effect foregone by obtaining the credit.
- (7) The amount of any income payable subject to deduction of income tax shall be taken for the purposes of subsection (5) above as the amount before deduction of tax.
- (8) References in this section to connected persons shall be construed in accordance with section 839.

Textual Amendments

- F533** Words in s. 786(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 320(2)* (with Sch. 2)
- F534** S. 786(3A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 320(3)* (with Sch. 2)
- F535** S. 786(4) repealed (with effect in accordance with s. 159(1) of the repealing Act) by *Finance Act 1996 (c. 8), s. 159(1), Sch. 41 Pt. 5(21)*, Note 1; S.I. 1996/2646, art. 2
- F536** Words in s. 786(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 320(4)* (with Sch. 2)
- F537** S. 786(5ZA) inserted (19.7.2006) by *Finance Act 2006 (c. 25), Sch. 6 para. 8(2)*
- F538** S. 786(5A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 320(5)* (with Sch. 2)

Marginal Citations

- M51** Source—1970 s.496

787 Restriction of relief for payments of interest.

- ^{M52}(1) Relief shall not be given to any person under any provision of the Tax Acts in respect of any payment of interest if a scheme has been effected or arrangements have been made (whether before or after the time when the payment is made) such that the sole or main benefit that might be expected to accrue to that person from the transaction under which the interest is paid was the obtaining of a reduction in tax liability by means of any such relief.
- [^{F539}(1A) This section has effect in relation to Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) but taking the reference in subsection (1) above to giving relief to any person in respect of any payment of interest as including a reference to the bringing into account by any person in accordance with that Chapter of any debit in respect of interest (whether a payment or not); and other references in this section to relief shall be construed accordingly.]

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(2) In this section “relief” means relief by way of deduction in computing profits or gains or deduction or set off against income or total profits.

[^{F540}(3) Where the relief is claimed by virtue of section 403—

- (a) in respect of a deficit to which section 83 of the Finance Act 1996 applies (non-trading deficit on loan relationships), or
- (b) in respect of trading losses, in a case where in computing those losses debits in respect of loan relationships are treated under section 82(2)(b) of that Act as expenses of the trade which are deductible in computing the profits of the trade,

any question under this section as to what benefit might be expected to accrue from the transaction in question shall be determined by reference to the claimant company and the surrendering company taken together.]

Textual Amendments

F539 S. 787(1A) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), Sch. 25 para. 53(2)

F540 S. 787(3) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), Sch. 25 para. 53(3)

Modifications etc. (not altering text)

C78 S. 787 extended (with effect in accordance with s. 56 of the affecting Act) by Finance Act 2005 (c. 7), Sch. 2 para. 8

Marginal Citations

M52 Source—1976 s.38

Status:

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