

Status: Point in time view as at 16/12/2010.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Dividends from the controlled foreign company is up to date with all changes known to be in force on or before 15 July 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)

SCHEDULES

SCHEDULE 26

RELIEFS AGAINST LIABILITY FOR TAX IN RESPECT OF CHARGEABLE PROFITS

Dividends from the controlled foreign company

- 4 (1) This paragraph applies in any case where—
- ^{F1}(a) an accounting period of a controlled foreign company is one in respect of which an apportionment under subsection (3) of section 747 falls to be made; and
 - (b) the company's chargeable profits for that period have been apportioned among the persons referred to in ^{F2}that subsection], and
 - (c) the controlled foreign company pays a dividend in whole or in part out of the total profits from which (in accordance with subsection (6)(a) of that section) those chargeable profits are derived.
- (2) Subject to paragraphs 5 and 6 below, where this paragraph applies, the aggregate of the sums ^{F3}chargeable on] companies resident in the United Kingdom in accordance with section 747(4)(a) in respect of the chargeable profits referred to in sub-paragraph (1)(b) above shall be treated for the purposes of ^{F4}Part 2 of TIOPA 2010 (double taxation relief)] as if it were an amount of tax paid in respect of the profits concerned under the law of the territory in which the controlled foreign company was resident and, accordingly, as underlying tax for the purposes of Chapter II of that Part.
- (3) In the following provisions of this paragraph and in paragraphs 5 and 6 below, the aggregate of the sums which, under sub-paragraph (2) above, fall to be treated as underlying tax is referred to as the "gross attributed tax".
- (4) If, in the case of a person who receives the dividend, ^{F5}section 36, 40, 41 or 42 of TIOPA 2010] has the effect of reducing the amount which (apart from that section) would have been the amount of the credit for foreign tax which is to be allowed to that person, then, for the purposes of sub-paragraph (5) below, the amount of that reduction shall be determined and so much of it as does not exceed the amount of the foreign tax, exclusive of underlying tax, for which credit is to be allowed in respect of the dividend is in that sub-paragraph referred to as "the wasted relief".
- (5) Except for the purpose of determining the amount of the wasted relief, the gross attributed tax shall be treated as reduced by the aggregate of the wasted relief arising in the case of all the persons falling within sub-paragraph (4) above and, on the making of a claim by any of the companies referred to in sub-paragraph (2) above—
- (a) the amount of tax ^{F3}chargeable on] the company in accordance with section 747(4)(a) in respect of the chargeable profits referred to in sub-paragraph (1) (b) above shall, where appropriate, be reduced; and

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- (b) all such adjustments (whether by repayment of tax or otherwise) shall be made as are appropriate to give effect to any reduction under paragraph (a) above.

Textual Amendments

- F1** Sch. 26 para. 4(1)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 36(2)**; S.I. 1998/3173, **art. 2**
- F2** Words in Sch. 26 para. 4(1)(b) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 36(3)**; S.I. 1998/3173, **art. 2**
- F3** Words in Sch. 26 para. 4(2)(5)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 36(4)(5)**; S.I. 1998/3173, **art. 2**
- F4** Words in Sch. 26 para. 4(2) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 35(3)** (with Sch. 9)
- F5** Words in Sch. 26 para. 4(4) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 35(4)** (with Sch. 9)

- 5 (1) In so far as any provision of—
- [^{F6}(a) arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom), or
- (b) unilateral relief arrangements for a territory outside the United Kingdom (as defined by section 8 of that Act),]
- makes relief which is related to foreign dividends received by a company resident in the United Kingdom conditional upon that company either having a particular degree of control of the company paying the dividend or being a subsidiary of another company which has that degree of control, that condition shall be treated as fulfilled in considering whether any such company is by virtue of paragraph 4(2) above entitled to relief under [^{F7}Part 2 of TIOPA 2010] in respect of any of the gross attributed tax.
- (2) Notwithstanding anything in paragraph 4(2) above, in [^{F8}section 31(2)(b) and (3) of TIOPA 2010] the expression “underlying tax” does not include gross attributed tax.
- (3) In a case where the controlled foreign company pays a dividend otherwise than out of specified profits and, on the apportionment referred to in paragraph 4(1) above, less than the whole of the chargeable profits of the controlled foreign company concerned is apportioned to companies which are resident in the United Kingdom and liable for tax thereon as mentioned in section 747(4)(a)—
- (a) the gross attributed tax shall be regarded as attributable to a corresponding proportion of the profits in question, and in this sub-paragraph the profits making up that proportion are referred to as “taxed profits”;
- (b) so much of the dividend as is received by, or by a successor in title of, any such company shall be regarded as paid primarily out of taxed profits; and
- (c) so much of the dividend as is received by any other person shall be regarded as paid primarily out of profits which are not taxed profits.
- (4) The reference in sub-paragraph (3)(b) above to a successor in title of a company resident in the United Kingdom is a reference to a person who is such a successor in respect of the whole or any part of that interest in the controlled foreign company by virtue of which an amount of its chargeable profits was apportioned to that company.

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Textual Amendments

- F6** Sch. 26 para. 5(1)(a)(b) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 35(5)** (with Sch. 9)
- F7** Words in Sch. 26 para. 5(1) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 35(6)** (with Sch. 9)
- F8** Words in Sch. 26 para. 5(2) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 35(7)** (with Sch. 9)

- 6 (1) In any case where—
- (a) on a claim for relief under paragraph 3 above, the whole or any part of any sum has been allowed as a deduction on a disposal of shares in any company; and
 - (b) that sum forms part of the gross attributed tax in relation to a dividend paid by that company; and
 - (c) a person receiving the dividend in respect of the shares referred to in paragraph (a) above (“the primary dividend”) or any other relevant dividend is, by virtue of paragraph 4(2) above, entitled under [F9Part 2 of TIOPA 2010] to relief (by way of underlying tax) by reference to the whole or any part of the gross attributed tax;
- the amount which, apart from this paragraph, would be available by way of any such relief to the person referred to in paragraph (c) above shall be reduced or, as the case may be, extinguished by deducting therefrom the amount allowed by way of relief as mentioned in paragraph (a) above.
- (2) For the purposes of sub-paragraph (1)(c) above, in relation to the primary dividend, another dividend is a relevant dividend if—
- (a) it is a dividend in respect of shares in a company which is resident outside the United Kingdom; and
 - (b) it represents profits which, directly or indirectly, consist of or include the primary dividend.

Textual Amendments

- F9** Words in Sch. 26 para. 6(1)(c) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 35(8)** (with Sch. 9)

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