



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART VI

#### COMPANY DISTRIBUTIONS, TAX CREDITS ETC

#### CHAPTER VA

#### FOREIGN INCOME DIVIDENDS

##### Modifications etc. (not altering text)

C1 Pt. 6 Ch. 5A modified (retrospective to 8.10.1996) by [Finance Act 1997 \(c. 16\)](#), [Sch. 7 para. 2\(1\)\(3\)](#)

##### *[<sup>F1</sup> Election by company paying dividend*

##### Textual Amendments

F1 Pt. 6 Ch. 5A (ss. 246A-246Y) inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 16 para. 1](#)

#### **246A Election by company paying dividend.**

- (1) Where a company [<sup>F2</sup>resident in the United Kingdom] pays a dividend, the dividend shall be treated as a foreign income dividend for the purposes of this Chapter if the company elects for it to be so treated in accordance with this section and section 246B.
- (2) An election may not be made under this section as regards a dividend unless the dividend is paid, or to be paid, in cash.
- (3) An election may not be made under this section as regards a dividend which is paid, or to be paid, to a person by virtue of his holding a share in respect of which there are arrangements for the holder to choose whether, or in what form, dividends are to be

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paid; and the arrangements may be for the holder to choose to be paid a dividend by a company other than the one which issued the share.

- (4) Where at a given time—
- (a) a company pays one dividend in respect of each of two or more shares of the same class, and
  - (b) payment is on the same terms as respects all the shares involved,
- an election may not be made under this section as regards any of the dividends unless an election is made as regards each of the dividends.
- (5) Where at a given time—
- (a) a company pays two or more dividends in respect of each of two or more shares of the same class, and
  - (b) payment is on the same terms as respects all the shares involved,
- an election may not be made under this section as regards any one of the dividends in respect of a given share unless an election is also made as regards the corresponding dividend in respect of each of the other shares involved.
- (6) Subject to subsection (7) below, a company which has more than one class of share capital may not make an election under this section as regards any dividend.
- (7) In a case where—
- (a) a company has more than one class of share capital,
  - (b) at a given time the company pays a dividend in respect of each share of each such class, and
  - (c) all of those dividends are paid on the same terms,
- the company may elect that each of those dividends is to be treated as a foreign income dividend.
- (8) For the purposes of subsection (7) above a dividend is paid on the same terms as another dividend if the relevant proportion in the case of each dividend is the same; and the relevant proportion, in relation to a dividend, is the proportion which the amount of the dividend bears to the nominal value of the share in respect of which the dividend is paid.
- (9) For the purposes of subsections (6) and (7) above fixed-rate preference shares shall not be treated as constituting a class of share capital; and “fixed-rate preference shares” shall be construed in accordance with section 95(5).
- (10) Where an election is made under this section as regards a dividend in respect of which an election is in force under section 247(1)—
- (a) the election under this section shall have effect as if it were also a notice to the collector under section 247(3) stating that the paying company does not wish the election under section 247(1) to have effect in relation to the dividend as regards which the election under this section is made;
  - (b) if the election under this section is revoked, the revocation shall have effect as if it were also a revocation of the notice deemed by paragraph (a) above;
  - (c) the notice deemed by paragraph (a) above may not be revoked otherwise than as mentioned in paragraph (b) above;
  - (d) if the notice deemed by paragraph (a) above is revoked it shall be treated as never having been made.

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### Textual Amendments

- F2** Words in s. 246A(1) inserted (with effect in accordance with Sch. 27 para. 1(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 1(1)

## 246B Procedure for making election.

- (1) An election under section 246A—
  - (a) must be made by notice to the inspector;
  - (b) must be made not later than the time the dividend is paid;
  - (c) may be revoked by a further notice to the inspector before that time (without prejudice to the making of another election as regards the same dividend);
  - (d) cannot be revoked after the dividend is paid.
- (2) A notice under subsection (1)(a) above must—
  - (a) identify the dividend in respect of which the election is made, and
  - (b) be in such form as the Board may require.
- (3) Where section 246A(4), (5) or (7) applies—
  - (a) the same notice must be used to elect as regards all the dividends concerned, and
  - (b) the notice may identify the dividends concerned, or any of them, by means of a general description.

*Recipient of foreign income dividend*

## 246C No tax credit for recipient.

Section 231(1) shall not apply where the distribution there mentioned is a foreign income dividend.

## 246D Individuals etc.

- (1) Where a company pays a foreign income dividend in a case in which an individual is beneficially entitled to the dividend, that individual shall be treated as having received on the date of the payment income of an amount which, if reduced by an amount equal to income tax on that income at the lower rate for the year of assessment in which the date of the payment fell, would be equal to the amount of the dividend.
- (2) Where subsection (1) above applies—
  - (a) [<sup>F3</sup>the individual shall be treated as having paid income tax at the lower rate on that income] or, if his total income is reduced by any deductions, on so much of it as is part of his total income as so reduced;
  - (b) no repayment shall be made of income tax treated by virtue of paragraph (a) above as having been paid;
  - (c) to the extent that it would not otherwise be so treated, that income shall be treated [<sup>F4</sup>(without prejudice to paragraph (a) above) as if it were income to which section 1A applies;]
  - (d) that income shall be treated for the purposes of sections 348 and 349(1) as not brought into charge to income tax.

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- (3) Where a company pays a foreign income dividend to the personal representatives of a deceased person as such during the administration period, the amount of income which, if the case had been one in which an individual was beneficially entitled to the dividend, that individual would be treated under subsection (1) above as having received shall be deemed for the purposes of Part XVI to be part of the aggregate income of the estate of the deceased; and the preceding provisions of this subsection shall be construed as if they were contained in Part XVI.
- [<sup>F5</sup>(3A) Without prejudice to subsection (3) above, a foreign income dividend paid as mentioned in that subsection to personal representatives shall not be treated for the purposes of income tax as income of the personal representatives as such.]
- (4) Where a company pays a foreign income dividend to trustees and the dividend is income to which section 686 applies—
- (a) there shall be ascertained the amount of income which, if the case had been one in which an individual was beneficially entitled to the dividend, that individual would be treated under subsection (1) above as having received;
  - (b) income of that amount shall be treated as having arisen to the trustees on the date of the payment and as if it had been chargeable to income tax at the lower rate;
  - (c) paragraphs (a) to (d) of subsection (2) above shall, with the substitution of “income” for “total income” and with all other necessary modifications, apply to that income as they apply to income which an individual is treated as having received under subsection (1) above.
- (5) Subsections (1) and (1A) of section 233 shall not apply where the distribution mentioned in either of those subsections is a foreign income dividend [<sup>F6</sup>to which an individual is beneficially entitled, a foreign income dividend paid to personal representatives or a foreign income dividend paid to trustees in a case in which the dividend is income to which section 686 applies.]

#### **Textual Amendments**

- F3** Words in s. 246D(2)(a) substituted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 122\(5\)\(a\)](#)
- F4** Words in s. 246D(2)(c) substituted (with effect in accordance with [Sch. 6 para. 28](#) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 6 para. 5](#)
- F5** [S. 246D\(3A\)](#) inserted (with effect in accordance with s. 76(6) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 76\(1\)](#)
- F6** Words in s. 246D(5) inserted (retrospectively) by [Finance Act 1996 \(c. 8\), Sch. 27 para. 2](#)

### *Companies: payments and receipts*

#### **246E Foreign income dividend not franked payment.**

A foreign income dividend shall not constitute a distribution for the purposes of the definition of “franked payment” in section 238(1).

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#### **246F Calculation of ACT where company receives foreign income dividend.**

- (1) Where in any accounting period a company receives foreign income dividends, the company shall not be liable to pay advance corporation tax in respect of foreign income dividends paid by it in that period unless the amount of the foreign income dividends paid by it in that period exceeds the amount of the foreign income dividends received by it in that period.
- (2) If in an accounting period there is such an excess, advance corporation tax shall be payable on an amount equal to the excess.
- (3) If the amount of foreign income dividends received by a company in an accounting period exceeds the amount of the foreign income dividends paid by it in that period the excess shall be carried forward to the next accounting period and treated for the purposes of this section (including any further application of this subsection) as foreign income dividends received by the company in that period.
- (4) This section shall have effect subject to section 246T and paragraph 2(6) of Schedule 23A.
- (5) Without prejudice to section 238(5), Schedule 13 shall apply for the purpose of regulating the manner in which effect is to be given to this section.

#### **246G Information relating to foreign income dividends.**

- (1) Where section 234A applies by virtue of the fact that a foreign income dividend is paid by a company, references in that section to an appropriate statement shall be construed as references to a written statement—
  - (a) in such form as the Board may require,
  - (b) showing the amount of the dividend paid,
  - (c) showing the date of the payment, and
  - (d) stating that the dividend carries no entitlement to a tax credit;and in such a case section 234A(7) shall not apply.
- (2) In a case where—
  - (a) a requirement is imposed on a company under section 234A(2) or (3) in relation to a foreign income dividend paid by it, and
  - (b) the company fails to comply with the requirement,no election may be made by the company under section 246J or 246K as regards the dividend or any part of it.

#### **246H Power of inspector to require information.**

- (1) This section applies where a return made by a company for a return period in accordance with Schedule 13 shows that the company has paid foreign income dividends in the period.
- (2) The inspector may by notice require the company to furnish him within such time (not being less than 30 days) as may be specified in the notice with such further information relating to the dividends as he may reasonably require for the purposes of any enactment relating to foreign income dividends.
- (3) Without prejudice to the generality of subsection (2) above, the notice may require information as to the persons to whom dividends are paid.

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### *Foreign source profit and distributable foreign profit*

#### **246I Foreign source profit and distributable foreign profit.**

- (1) Where for an accounting period of a company there is any income, or any chargeable gain, in respect of which double taxation relief is afforded, then so much of that income or gain as forms part of the company's chargeable profits for the period is a foreign source profit of the company for the period.
- (2) Subsection (3) below applies where in the accounting period concerned there is any deduction to be made for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description.
- (3) In finding for the purposes of this section whether, or how much of, any income or gain forms part of the company's chargeable profits for the period the company may allocate the deduction in such amounts and to such of its profits for the period as it thinks fit.
- (4) Where a company has a foreign source profit for an accounting period, such part of it as exceeds the relevant amount of tax is for the purposes of this Chapter a distributable foreign profit of the company for the period.
- (5) Where the amount of foreign tax payable in respect of the foreign source profit exceeds the amount of corporation tax payable, before double taxation relief is afforded, in respect of that profit, the relevant amount of tax is the amount of foreign tax payable in respect of that profit.
- (6) Where subsection (5) above does not apply, the relevant amount of tax is <sup>F7</sup>the amount of corporation tax payable, before double taxation relief is afforded, in respect of the foreign source profit.]
- (7) In this section "double taxation relief" means—
  - (a) relief under double taxation arrangements which takes the form of a credit allowed against corporation tax, or
  - (b) unilateral relief under section 790(1) which takes that form;
 and "double taxation arrangements" here means arrangements having effect by virtue of section 788.
- (8) References in this section to a company's chargeable profits for an accounting period are to the amount of its profits for that period on which corporation tax falls finally to be borne; and section 238(4) shall apply for the purposes of this subsection.
- (9) For the purposes of this section foreign tax is any tax, imposed by the laws of a territory outside the United Kingdom, for which double taxation relief is afforded.
- (10) Section 788(5) shall apply for the purposes of this section.

#### **Textual Amendments**

- F7** Words in s. 246I(6) substituted (with effect in accordance with Sch. 27 para. 3(4)(5) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 3(1)

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### *Matching of dividend with distributable foreign profit*

#### **246J Matching of dividend with distributable foreign profit.**

- (1) Where a company pays a foreign income dividend in an accounting period it may elect that the dividend (or part of it) shall be matched with (or with part of) a distributable foreign profit of the company; and subsections (2) to (6) below shall have effect with regard to matching.
- (2) Different parts of a dividend may be matched with different distributable foreign profits or parts; and different dividends, or parts of different dividends, may be matched with different parts of the same distributable foreign profit.
- (3) A foreign income dividend (or part of one) may be matched with a distributable foreign profit (or part of one) only if the amount of the distributable foreign profit or part is equal to the amount of the dividend or part.
- (4) Subject to subsection (5) below, where a company pays a foreign income dividend in a given accounting period the dividend (or part of it) may only be matched with (or with part of) a distributable foreign profit of the company for that period or for the accounting period immediately preceding it, but without the need to exhaust distributable foreign profits for one of those periods before taking those for the other period.
- (5) Where a company pays a foreign income dividend in a given accounting period the dividend (or part of it) may be matched with (or with part of) a distributable foreign profit of the company for any subsequent accounting period, but only if there is no amount of unmatched distributable foreign profit of the company for the given period and no such amount for the accounting period immediately preceding the given period.
- (6) Where a distributable foreign profit (or part of one) has been matched with a foreign income dividend (or part of one) it cannot be matched with another foreign income dividend or part.

#### **Modifications etc. (not altering text)**

**C2** S. 246J(5) modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 22(2)

#### **246K Matching: subsidiaries.**

- (1) This section applies where a company (the subsidiary) is a 51 per cent. subsidiary of another company (the parent); but this is subject to section 246L.
- (2) In a case where—
  - (a) an accounting period of the subsidiary coincides with, or with part of, an accounting period of the parent, and
  - (b) the subsidiary has a distributable foreign profit for its accounting period, the whole of the profit is for the purposes of this section an eligible profit for the parent's accounting period.
- (3) In a case where—
  - (a) part of an accounting period of the subsidiary coincides with, or with part of, an accounting period of the parent, and

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- (b) the subsidiary has a distributable foreign profit for its accounting period, then, to the extent of the appropriate fraction, the profit is for the purposes of this section an eligible profit for the parent's accounting period.
- (4) The appropriate fraction is one—
- (a) whose numerator is equal to the number of the days in the subsidiary's accounting period that coincide with days in the parent's accounting period, and
  - (b) whose denominator is equal to the number of the days in the subsidiary's accounting period.
- (5) Where the parent pays a foreign income dividend in an accounting period it may elect that the dividend (or part of it) shall be matched with (or with part of) an eligible profit; and subsections (6) to (11) below shall have effect with regard to matching.
- (6) No election as to matching may be made unless the subsidiary gives its written consent in such form as the Board may require.
- (7) Different parts of a dividend may be matched with different eligible profits or parts; and different dividends, or parts of different dividends, may be matched with different parts of the same eligible profit.
- (8) A foreign income dividend (or part of one) may be matched with an eligible profit (or part of one) only if the amount of the eligible profit or part is equal to the amount of the dividend or part.
- (9) Subject to subsection (10) below, where the parent pays a foreign income dividend in a given accounting period the dividend (or part of it) may only be matched with (or with part of) an eligible profit for that period or for the accounting period immediately preceding it, but without the need to exhaust eligible profits for one of those periods before taking those for the other period.
- (10) Where the parent pays a foreign income dividend in a given accounting period the dividend (or part of it) may be matched with (or with part of) an eligible profit for any subsequent accounting period, but only if there is no amount of unmatched eligible profit derived from the same subsidiary for the given period and no such amount for the accounting period immediately preceding the given period.
- (11) Where an eligible profit (or part of one) has been matched with a foreign income dividend (or part of one) it cannot be matched with another foreign income dividend or part.
- (12) References in this section to a company apply only to bodies corporate; and in determining for the purposes of this section whether one company is a 51 per cent. subsidiary of another company, that other company shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on the sale of the shares would be treated as a trading receipt of its trade, or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.



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**Modifications etc. (not altering text)**

**C3** S. 246K(10) modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 22(2)

**246L Requirement as to subsidiaries.**

- (1) Section 246K(5) does not apply unless the subsidiary is a 51 per cent. subsidiary of the parent throughout the relevant period (determined under subsection (3) or (4) below).
- (2) In this section “the payment period” means the accounting period of the parent in which it pays the dividend as regards which an election under section 246K is proposed.
- (3) If the proposed election involves only eligible profits deriving from an accounting period of the subsidiary coinciding with the payment period, the relevant period is the payment period.
- (4) In any other case the relevant period is one that—
  - (a) begins with the beginning of the payment period or (if earlier) the beginning of the first or only relevant accounting period of the subsidiary, and
  - (b) ends with the end of the payment period or (if later) the end of the last or only relevant accounting period of the subsidiary.
- (5) For the purposes of subsection (4) above a relevant accounting period of the subsidiary is an accounting period of the subsidiary for which there is a distributable foreign profit which—
  - (a) is (as to the whole or part) an eligible profit, and
  - (b) would, under the proposed election, be to any extent matched with the dividend as regards which the election is proposed.
- (6) Section 246K(12) shall apply in determining for the purposes of this section whether the subsidiary is a 51 per cent. subsidiary of the parent at any given time.

**246M Matching: further provisions.**

- (1) Where a parent elects under section 246K as regards an eligible profit for an accounting period, the following rules shall have effect for the purposes of this Chapter—
  - (a) to the extent provided for in the election, the eligible profit shall be treated as a separate distributable foreign profit of the parent for the parent’s accounting period and as matched;
  - (b) the distributable foreign profit mentioned in section 246K(2)(b) or (3)(b) shall be treated as reduced accordingly or (depending on the circumstances) as extinguished;
  - (c) the foreign source profit of which the distributable foreign profit mentioned in section 246K(2)(b) or (3)(b) forms a part shall be treated as correspondingly divided between the parent and the subsidiary or (depending on the circumstances) as a foreign source profit of the parent alone for its accounting period.

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- (2) Where an election is made under section 246J or 246K with regard to anything which is or represents a distributable foreign profit of a subsidiary (or part of such a profit) no further election can be made with regard to it under the other section.

*Repayment or set-off of advance corporation tax*

**246N ACT to be repaid or set off against corporation tax liability.**

- (1) This section and section 246Q apply where—
- (a) a company pays a foreign income dividend in an accounting period (the relevant period), and
  - (b) the company does not treat itself as an international headquarters company at any time in the period by virtue of section 246S(9).
- (2) In a case where—
- (a) the company pays an amount of advance corporation tax in respect of qualifying distributions actually made by it in the relevant period,
  - (b) the amount, or part of it, is available to be dealt with under this section, and
  - (c) there is as regards the company an amount of notional foreign source advance corporation tax for the relevant period,
- an amount of the advance corporation tax paid shall be repaid to the company, or set off, or partly repaid and partly set off, in accordance with this section and section 246Q.
- (3) In the following provisions of this section “the relevant advance corporation tax” means the advance corporation tax paid as mentioned in subsection (2)(a) above.
- (4) The amount of the relevant advance corporation tax to be repaid or (as the case may be) set off, or partly repaid and partly set off, is whichever of the following is smaller—
- (a) so much of the relevant advance corporation tax as is available to be dealt with under this section;
  - (b) so much of the relevant advance corporation tax as is equal to the amount which is, as regards the company, the amount of notional foreign source advance corporation tax for the relevant period (found under section 246P).
- (5) So much of the relevant advance corporation tax as remains after deducting the aggregate of the deductible amounts is available to be dealt with under this section; and each of the following is a deductible amount—
- (a) an amount equal to so much (if any) of the relevant advance corporation tax as has been repaid;
  - (b) an amount equal to so much (if any) of the relevant advance corporation tax as has been set off against the company’s corporation tax liability for the relevant period under section 239(1) or, if there is—
    - (i) any amount of advance corporation tax from a preceding accounting period,
    - (ii) any amount of surrendered advance corporation tax, or
    - (iii) any amount of advance corporation tax from a succeeding accounting period,
 as would have been so set off if there had been no amounts as mentioned in sub-paragraphs (i) to (iii) above;

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- (c) an amount equal to so much (if any) of the relevant advance corporation tax as has been dealt with under section 239(3);
  - (d) an amount equal to so much (if any) of the relevant advance corporation tax as is advance corporation tax the benefit of which has been surrendered by the company under section 240;
  - (e) an amount equal to so much (if any) of the relevant advance corporation tax as has been set off against the company's corporation tax liability for the relevant period by virtue of the previous application of this section and section 246Q.
- (6) For the purposes of subsection (5)(b) above—
- (a) advance corporation tax from a preceding accounting period is advance corporation tax which by virtue of section 239(4) is treated for the purposes of section 239 as paid by the company in respect of distributions made by it in the relevant period;
  - (b) surrendered advance corporation tax is advance corporation tax which by virtue of section 240 is so treated;
  - (c) advance corporation tax from a succeeding accounting period is advance corporation tax which by virtue of section 239(3) is so treated;
- and in applying subsection (5)(b) above in a case where there is any amount as mentioned in subsection (5)(b)(i) to (iii), it shall be assumed that the company would not have surrendered the benefit of any of the relevant advance corporation tax under section 240.
- (7) No amount shall be repaid or set off under this section and section 246Q unless the company makes a claim for the purpose.

#### **246P Notional foreign source advance corporation tax.**

- (1) As regards the company mentioned in section 246N(1), the amount of notional foreign source advance corporation tax for the relevant period is the amount of advance corporation tax which—
- (a) the company would have paid in respect of distributions made by it in the relevant period, and
  - (b) would not have been set off against the company's corporation tax liability for the relevant period under section 239(1),
- on the assumptions mentioned in subsection (2) below.
- (2) The assumptions are that—
- (a) the qualifying foreign income dividends were the only distributions made by the company in the relevant period,
  - (b) no distributions were received (or treated for the purposes of section 246F as received) by the company in the relevant period,
  - (c) no amounts of advance corporation tax were by virtue of section 239(3) or (4) or section 240 treated for the purposes of section 239 as having been paid in respect of distributions made by the company in the relevant period,
  - (d) the benefit of the advance corporation tax paid in respect of distributions made by the company in the relevant period was not surrendered under section 240;
  - (e) the company's profits for the relevant period on which corporation tax fell finally to be borne consisted of the matched foreign source profits and no other profits,

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- [<sup>F8</sup>(ea) where any of the matched foreign source profits represent an amount (“a gross profit”) reduced by one or more such deductions as are mentioned in section 246I(2), the amount of double taxation relief which is to be taken, in finding the amount of corporation tax falling finally to be borne, to have been available (after the reduction) to be allowed by reference to the amount representing the gross profit was equal to the amount that would have been available to be so allowed had no reduction been made]; and
- (f) the amount of corporation tax charged in respect of a matched foreign source profit actually arising in an accounting period other than the relevant period was found by reference to—
- (i) the rate of foreign tax, within the meaning given by section 246I(9), actually chargeable in respect of the profit (having regard to the time when it arose), and
  - (ii) the rate of corporation tax that would have applied had the profit arisen in the relevant period.
- (3) A foreign income dividend is a qualifying foreign income dividend if—
- (a) it is a matched foreign income dividend paid by the company in the relevant period, and
  - (b) the company has elected for it to be a qualifying foreign income dividend.
- (4) A foreign income dividend the whole of which is, at the material time, matched with the whole or part of a distributable foreign profit of the company is a matched foreign income dividend.
- (5) Where there is a foreign income dividend only part of which is at the material time matched as mentioned in subsection (4) above, the part of the dividend which at that time is so matched shall be treated for the purposes of this section as a separate dividend and, accordingly, as a matched foreign income dividend.
- (6) The company may elect that matched foreign income dividends paid by it in the relevant period are qualifying foreign income dividends only if the amount found under paragraph (a) of subsection (7) below exceeds the amount found under paragraph (b) of that subsection; and where there is such an excess the election may only be made as regards matched foreign income dividends whose total amount is the same as or less than the amount of the excess.
- (7) The amounts referred to in subsection (6) above are—
- (a) the total amount of foreign income dividends paid by the company in the relevant period (other than excluded dividends);
  - (b) the total amount of foreign income dividends received (or treated for the purposes of section 246F as received) by the company in the relevant period;
- and for the purposes of this subsection an excluded dividend is a foreign income dividend which by virtue of section 246G(2) is not capable of being matched.
- (8) A matched foreign source profit is a foreign source profit of which a matched distributable foreign profit forms part; and for the purposes of this subsection “a matched distributable foreign profit” means a distributable foreign profit of the company the whole or part of which is, at the material time, matched with a qualifying foreign income dividend, or with part of such a dividend, or with different such dividends or parts.
- (9) Where the matched foreign source profit is a foreign source profit of which a partly matched distributable foreign profit forms part, for the purposes of any calculation

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required by subsections (1) and (2) above the amount of the matched foreign source profit shall be taken to be reduced by an amount which bears to the full amount of the matched foreign source profit the same proportion as the unmatched part of the distributable foreign profit bears to the amount of the distributable foreign profit.

(10) For the purposes of subsection (9) above—

- (a) “a partly matched distributable foreign profit” means a distributable foreign profit of the company part of which is not, at the material time, matched as mentioned in subsection (8) above, and
- (b) “the unmatched part of the distributable foreign profit” shall be construed accordingly.

(11) For the purposes of this section—

- (a) “the relevant period” shall be construed in accordance with section 246N(1);
- (b) “the material time” means the time at which the claim mentioned in section 246N(7) is made.

(12) References in this section to matching shall be construed in accordance with sections 246J to 246M.

[<sup>F9</sup>(12A) In this section “double taxation relief” has the same meaning as in section 246I.]

(13) Section 238(4) shall apply for the purposes of this section.

#### Textual Amendments

- F8** S. 246P(2)(ea) inserted (with effect in accordance with Sch. 27 para. 3(4)(5) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 3(2)
- F9** S. 246P(12A) inserted (with effect in accordance with Sch. 27 para. 3(4)(5) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 3(3)

#### 246Q Repayment or set-off: supplementary.

- (1) Subsections (2) and (3) below shall have effect to determine whether the amount which is the smaller of the amounts found under section 246N(4) is to be repaid, set off, or partly repaid and partly set off.
- (2) If at the time when it falls to be determined whether the amount mentioned in subsection (1) above is to be repaid or set off—
  - (a) advance corporation tax paid (or treated for the purposes of section 239 as paid) by the company in respect of distributions made by it in the relevant period has so far as possible been set against its liability to corporation tax for the period under section 239(1), but
  - (b) the company’s liability to corporation tax for the period is to any extent undischarged,

the amount mentioned in subsection (1) above shall so far as possible be set off against the company’s liability to corporation tax for the relevant period (and an amount of that liability equal to the amount so set off shall accordingly be discharged); and any excess of the amount mentioned in subsection (1) above over the amount so set off shall be repaid.

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- (3) Where paragraph (a) of subsection (2) above applies but paragraph (b) of that subsection does not, the whole of the amount mentioned in subsection (1) above shall be repaid.
- (4) No amount shall be repayable under section 246N and this section until the expiry of nine months from the end of the relevant period.
- (5) An amount of advance corporation tax which has been dealt with under section 246N and this section—
  - (a) shall not be set off under section 239(1) against the company’s liability to corporation tax for any accounting period;
  - (b) shall not be available for the purposes of a claim under section 240.
- (6) A return made by the company for the relevant period under section 11 of the Management Act, or an amendment of such a return, shall be treated as a claim for the purposes of section 246N and this section if the return or (as the case may be) the amendment contains such particulars as the inspector may require.
- (7) A claim for those purposes which is not made by means of a return under section 11 of the Management Act, or by means of an amendment of such a return, shall be supported by such particulars as the inspector may require.
- (8) In a case where—
  - (a) a claim is made under section 246N and this section, and
  - (b) by virtue of the claim, an amount of advance corporation tax is repaid or set off which has already been set off by virtue of section 239(4) against the company’s corporation tax liability for an accounting period falling after the accounting period to which the claim relates,
 the set-off by virtue of section 239(4) of that amount shall be treated for the purposes of section 252 as if it ought not to have been made.
- (9) In determining for the purposes of subsection (8) above whether an amount repaid or set off by virtue of a claim under section 246N and this section is an amount which has already been set off against the company’s corporation tax liability for an accounting period, amounts of advance corporation tax repaid or set off by virtue of that claim shall be treated as having been set off against that liability only after any other amounts of advance corporation tax that were capable of being set off against that liability have been taken into account.
- (10) Where section 252 applies by virtue of this section the reference in subsection (5) of that section to the Management Act shall be treated as not including a reference to section 34 of that Act.
- (11) In this section “the relevant period” shall be construed in accordance with section 246N(1).

#### **246R Supplementary claims.**

- (1) This section applies where—
  - (a) a claim is made under sections 246N and 246Q, and
  - (b) at any time after the claim is made the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in the accounting period to which the claim relates.

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- (2) The company may as regards that accounting period make a further claim under sections 246N and 246Q (a supplementary claim) so as to take account of the election.
- (3) Subsections (5) and (6) below shall apply in determining for the purposes of the supplementary claim the amount of notional foreign source advance corporation tax for the accounting period to which that claim relates.
- (4) In subsections (5) and (6) below a “previously counted dividend” means a foreign income dividend (or part of one) which was included in an election made by the company under section 246P for the purposes of an earlier claim as regards the accounting period (and which, accordingly, was treated as a qualifying foreign income dividend for those purposes).
- (5) In applying section 246P for the purposes of the supplementary claim, a previously counted dividend shall be treated as not being a qualifying foreign income dividend notwithstanding the election mentioned in subsection (4) above; and the company may not include the previously counted dividend in any further election made under section 246P for the purposes of the supplementary claim.
- (6) In relation to an election which the company proposes to make under section 246P for the purposes of the supplementary claim, section 246P(6) shall have effect as if for the reference to matched foreign income dividends whose total amount is the same as or less than the amount of the excess there mentioned there were substituted a reference to matched foreign income dividends whose total amount, when added to the total amount of the previously counted dividends, gives an amount which is equal to or less than the amount of that excess.
- (7) A company may make more than one supplementary claim as regards any accounting period.

#### *International headquarters companies*

### **246S International headquarters companies.**

- (1) For the purposes of this Chapter a company is an international headquarters company in an accounting period if—
  - (a) at least one of the first three conditions (set out in subsections (2) to (5) below) is fulfilled, and
  - (b) the fourth condition (set out in subsection (7) below) is fulfilled;but the fourth condition need not be fulfilled if the second condition is fulfilled.
- (2) The first condition is that—
  - (a) the company is wholly owned by another company throughout the accounting period, and
  - (b) that other company is a foreign held company in the accounting period.
- (3) The second condition is that—
  - (a) the company is [<sup>F10</sup>a 100 per cent. subsidiary of] another company throughout the accounting period,
  - (b) that other company is not resident in the United Kingdom at any time in the accounting period,

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- (c) throughout the accounting period, and the period of 12 months immediately preceding it, the shares in that other company are [<sup>F11</sup>listed] in the official list of a recognised stock exchange other than a stock exchange in the United Kingdom,
- (d) at a time falling within the accounting period or the period of 12 months immediately preceding it, shares in that other company have been the subject of dealings on a recognised stock exchange other than a stock exchange in the United Kingdom, and
- (e) throughout the accounting period, and the period of 12 months immediately preceding it, the shares in that other company are not [<sup>F11</sup>listed] in the official list of a recognised stock exchange in the United Kingdom;

<sup>F12</sup> .....

- (4) For the purposes of subsection (3)(e) above, shares that (apart from this subsection) would be regarded as quoted in the official list of a recognised stock exchange shall be regarded as not being so quoted if the issuer of the shares is not subject, in relation to them, to the full requirements applicable by virtue of listing rules to the listing of shares on that exchange; and in this subsection “listing rules” shall be construed in accordance with section 142(6) of the Financial Services Act 1986.
- (5) The third condition is that—
  - (a) at each given time in the accounting period each shareholder of the company owns at least 5 per cent. of the company’s share capital, and
  - (b) the test mentioned in subsection (6) below is satisfied.
- (6) The test is that at each given time in the accounting period at least 80 per cent. of the company’s share capital is owned by—
  - (a) persons who are not companies and who are not resident in the United Kingdom at any time in the accounting period,
  - (b) companies which are foreign held companies in the accounting period, or
  - (c) persons falling within paragraph (a) above and companies falling within paragraph (b) above.
- (7) The fourth condition is that at each given time in the accounting period not more than 20 per cent. of the company’s ordinary share capital is ultimately owned by persons who are not companies and are resident in the United Kingdom; and where any shares are not directly owned by a person who is not a company their ultimate ownership shall be found by tracing ownership through any corporate holders to persons who are not companies on such basis as is reasonable.
- (8) <sup>F13</sup> .....
- (9) Where a company pays a foreign income dividend, for the purposes of this Chapter it may treat itself as an international headquarters company if—
  - (a) in the company’s opinion it is likely to be an international headquarters company in the accounting period in which the dividend is paid, and
  - (b) in a case where the dividend is paid in the company’s second accounting period or a subsequent accounting period, it is an international headquarters company in the immediately preceding accounting period;
 and for the purposes of paragraph (a) above the company’s opinion held at the time the dividend is paid is to be taken.



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- (10) For the purposes of this section a company is a foreign held company in an accounting period if—
- (a) at each given time in the accounting period at least 80 per cent. of the company's share capital is owned by persons who are not resident in the United Kingdom at any time in the accounting period, or
  - (b) throughout the accounting period the company is wholly owned by another company and at each given time in the accounting period at least 80 per cent. of that other company's share capital is owned by persons who are not resident in the United Kingdom at any time in the accounting period.
- [<sup>F14</sup>(10A) For the purposes of this section a company is a 100 per cent. subsidiary of another if and so long as it is a body corporate all of whose share capital would fall to be treated for the purposes of section 838 as owned directly or indirectly by the other and that other is a body corporate; but for this purpose references in that section to owning share capital shall be construed in accordance with subsection (12) below.]
- (11) For the purposes of this section a company wholly owns another company if the first company is the beneficial owner of all the share capital of the second company.
- (12) For the purposes of this section the question whether a person owns a particular percentage of a company's share capital at a particular time shall be determined by—
- (a) assuming that a general meeting of the company is held at that time;
  - (b) taking the number of votes carried by the company's share capital and capable of being cast at such a meeting;
  - (c) taking the number of those votes capable of being so cast by the person concerned by virtue of the company's share capital beneficially owned by him;
  - (d) expressing the number found under paragraph (c) above as a percentage of the number found under paragraph (b) above;
  - (e) taking the percentage found under paragraph (d) above as the percentage of the company's share capital owned by that person at that time.
- (13) Subsection (12) above shall not apply for the purposes of subsection (7) above; and in subsection (7) references to ownership shall be construed as references to beneficial ownership.

#### Textual Amendments

- F10** Words in s. 246S(3)(a) substituted (with effect in accordance with Sch. 27 para 4(5)(6) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 4(2)
- F11** Words in s. 246S(3)(c)(e) substituted (with effect in accordance with Sch. 38 para. 6(5) of the amending Act) by Finance Act 1996 (c. 8), Sch. 38 para. 6(1)(2)(c)
- F12** S. 246S(3): words after paragraph (e) repealed (with effect in accordance with Sch. 41 Pt. 5(17) Note of the repealing Act) by Finance Act 1996 (c. 8), Sch. 41 Pt. 5(17)
- F13** S. 246S(8) repealed (with effect in accordance with Sch. 27 para. 4(5)(6) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 27 para. 4(3), Sch. 41 Pt. 5(17), Note
- F14** S. 246S(10A) inserted (with effect in accordance with Sch. 27 para. 4(5)(6) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 4(4)

#### Modifications etc. (not altering text)

- C4** S. 246S(9) modified (29.4.1996) by Finance Act 1996 (c. 8), Sch. 27 para. 4(6)

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## **246T Liability to pay ACT displaced.**

- (1) This section applies where—
  - (a) a company pays a foreign income dividend in an accounting period, and
  - (b) at the time it pays the dividend the company treats itself as an international headquarters company by virtue of section 246S(9).
- (2) The company shall not be liable to pay advance corporation tax in respect of the dividend.
- (3) This section shall have effect subject to section 246V.

## **246U Settlement of liability by IHC as to ACT.**

- (1) This section applies where—
  - (a) at any time when it pays a dividend in an accounting period a company treats itself as an international headquarters company by virtue of section 246S(9), and
  - (b) the company is an international headquarters company in the accounting period.
- (2) If amount A exceeds amount B, the company shall be liable to pay an amount equal to the excess as if the amount were advance corporation tax payable in respect of a distribution made by the company in the last return period falling within the accounting period; and “return period” here has the same meaning as in Schedule 13.
- (3) If amount B exceeds amount A, an amount equal to the excess shall be paid to the company in accordance with this section; and the payment shall be treated as if it were a repayment of advance corporation tax which—
  - (a) was paid by the company in respect of distributions made by it in the accounting period, and
  - (b) falls to be repaid under sections 246N and 246Q.
- (4) Amount A is the total amount of the advance corporation tax which by virtue of section 246T and paragraph 3A of Schedule 13 the company is not liable to pay, and has not paid, in respect of dividends paid by it in the accounting period.
- (5) Amount B is the amount (if any) of the advance corporation tax which would be required to be repaid, or set off, or partly repaid and partly set off, under sections 246N and 246Q if the company—
  - (a) had not treated itself as an international headquarters company at any time in the accounting period, and
  - (b) had, at the expiry of nine months from the end of the accounting period, made a claim as regards the accounting period in accordance with sections 246N and 246Q.
- (6) Where an amount of advance corporation tax actually paid by the company in respect of qualifying distributions made by it in the accounting period has been dealt with under section 239(3), or the benefit of such an amount has been surrendered under section 240, in applying section 246N(5)(c) and (d) by virtue of subsection (5) above it shall be assumed that an equivalent amount of advance corporation tax would have been so dealt with or (as the case may be) that the benefit of an equivalent amount of advance corporation tax would have been so surrendered.

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- (7) No amount shall be paid under subsection (3) above unless the company makes a claim for payment; and—
- (a) a return made by the company for the accounting period under section 11 of the Management Act, or
  - (b) an amendment of such a return,
- shall be treated as a claim for payment if the return or (as the case may be) the amendment contains such particulars as the inspector may require.
- (8) A claim which is not made by means of a return under section 11 of the Management Act, or by means of an amendment of such a return, shall be supported by such particulars as the inspector may require.
- (9) No amount shall be payable under subsection (3) above until the expiry of nine months from the end of the accounting period.

#### **246V Settlement of liability by non-IHC as to ACT.**

- (1) This section applies where—
- (a) at any time when it pays a dividend in an accounting period a company treats itself as an international headquarters company by virtue of section 246S(9), and
  - (b) the company is not an international headquarters company in the accounting period.
- (2) Section 246T shall not apply, and shall be treated as never having applied, as regards the dividend.
- (3) Sections 246N and 246Q shall apply as if the company had not treated itself as an international headquarters company at any time in the period by virtue of section 246S(9).

#### **246W Payments and repayments where further matching takes place.**

- (1) Subsection (2) below applies where—
- (a) a company pays an amount under section 246U(2) as regards an accounting period,
  - (b) the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in that accounting period, and
  - (c) had the election been made before the relevant time, the company would not have been required to pay some or all of the amount mentioned in paragraph (a) above.
- (2) The company shall be entitled to repayment of so much of the amount mentioned in subsection (1)(a) above as it would not have been required to pay if the election had been made before the relevant time.
- (3) Subsection (4) below applies where—
- (a) a company either pays an amount under section 246U(2) as regards an accounting period or is paid an amount under section 246U(3) as regards the period,
  - (b) the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in that accounting period, and

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- (c) had the election been made before the relevant time, the company would have been entitled under section 246U(3) to be paid an amount which was not in fact paid to it.
- (4) The company shall be entitled to payment of the amount mentioned in subsection (3) (c) above.
- (5) Any repayment under subsection (2) above shall (without prejudice to section 246U(2)) be treated as if it were a repayment of advance corporation tax which—
  - (a) was paid by the company in respect of a distribution made by it in the last return period falling within the accounting period mentioned in subsection (1) above, and
  - (b) falls to be repaid under sections 246N and 246Q.
- (6) In relation to a repayment under subsection (2) above which by virtue of subsection (5) above is treated as a repayment of advance corporation tax, the material date for the purposes of section 826 shall be the date when advance corporation tax in respect of distributions made by the company in the return period mentioned in subsection (5) above became (or, as the case may be, would have become) due and payable; and accordingly subsection (2A) of section 826 shall not apply in relation to the repayment.
- (7) Any payment under subsection (4) above shall be treated as if it were a repayment of advance corporation tax which—
  - (a) was paid by the company in respect of distributions made by it in the accounting period mentioned in subsection (3) above, and
  - (b) falls to be repaid under sections 246N and 246Q.
- (8) Subsections (7) and (8) of section 246U shall apply in relation to payments and repayments under this section as they apply in relation to payments under section 246U(3).
- (9) For the purposes of this section—
  - (a) “the relevant time” means the expiry of nine months from the end of the accounting period mentioned in subsection (1) or (3) above;
  - (b) “return period” has the same meaning as in Schedule 13.

### *Adjustments*

#### **246X Adjustments where profits or foreign tax altered.**

- (1) This section applies where a company is paid or repaid an amount under any provision of this Chapter, or sets off under any such provision an amount against a liability of the company to corporation tax, and either—
  - (a) there is any alteration of the profits of a company for an accounting period which renders the payment or repayment, or the amount set off, excessive or insufficient, or
  - (b) there is any alteration of an amount of tax payable under the laws of a territory outside the United Kingdom which renders the payment or repayment, or the amount set off, excessive or insufficient.

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- (2) Where there is any such alteration as is mentioned in subsection (1) above the company may revise any election made under section 246J or 246K or 246P in such manner as is just and reasonable having regard to the alteration.
- (3) Where there is any such alteration as is mentioned in subsection (1) above, then such adjustments shall be made of any calculation required by this Chapter as are just and reasonable having regard to the alteration and to any revision made under subsection (2) above; and payments or repayments shall be made accordingly.

*Application of this Chapter]*

**246Y Application of this Chapter.**

This Chapter shall have effect in relation to—

- (a) any dividend paid on or after 1st July 1994;
- (b) any foreign source profit consisting of income for, or a chargeable gain for, an accounting period beginning on or after 1st July 1993.

**Status:**

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**Changes to legislation:**

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