

Status: Point in time view as at 29/04/1996.

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Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART VI

COMPANY DISTRIBUTIONS, TAX CREDITS ETC

CHAPTER VA

FOREIGN INCOME DIVIDENDS

[^{F1} Repayment or set-off of advance corporation tax]

Textual Amendments

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

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.

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- (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;
 - (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.

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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,

[^{F2}(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

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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 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.
- [^{F3}(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.

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Textual Amendments

- F2** 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)**
- F3** 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.
- (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

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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.
- (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.

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- (7) A company may make more than one supplementary claim as regards any accounting period.

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