



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART VIII

#### TAXATION OF INCOME AND CHARGEABLE GAINS OF COMPANIES

##### *Taxation of income*

VALID FROM 24/07/2002

#### **[<sup>F1</sup>338B Charges on income: annuities or other annual payments**

- (1) An annuity or other annual payment is a charge on income if—
  - (a) the requirements specified in subsection (2) are met, and
  - (b) it is not excluded from being a charge on income for the purposes of corporation tax—
    - (i) by any of the following provisions of this section, or
    - (ii) by any other provision of the Corporation Tax Acts.
- (2) The requirements are that the payment—
  - (a) is made under a liability incurred for a valuable and sufficient consideration,
  - (b) is not charged to capital,
  - (c) is ultimately borne by the company, and
  - (d) in the case of a company not resident in the United Kingdom, is incurred wholly and exclusively for the purposes of a trade which is or is to be carried on by it in the United Kingdom through a branch or agency.
- (3) An annuity or other annual payment made to a person not resident in the United Kingdom shall be treated as a charge on income only if the following conditions are met.
- (4) The conditions are that the company making the payment is resident in the United Kingdom and that either—

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- (a) the company deducts tax from the payment in accordance with section 349, and accounts under Schedule 16 for the tax so deducted, or
  - (b) the person beneficially entitled to the income in respect of which the payment is made is a company that is not resident in the United Kingdom but which carries on a trade in the United Kingdom through a branch or agency and the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2) of that company, or
  - (c) the payment is one payable out of income brought into charge to tax under Case V of Schedule D.
- (5) An annuity or other annual payment is not a charge on income if—
- (a) it is payable in respect of the company’s loan relationships, or
  - (b) it is a royalty to which Schedule 29 to the Finance Act 2002 applies (intangible fixed assets).
- (6) Nothing in this section prevents an annuity or other annual payment from being a charge on income if it is a qualifying donation (within the meaning of section 339).]

#### Textual Amendments

**F1** Ss. 338-338B substituted for s. 338 (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 1\(2\)](#)

### 337 Companies beginning or ceasing to carry on a trade.

<sup>M1</sup>(1) Where a company begins or ceases to carry on a trade, or to be within the charge to corporation tax in respect of a trade, the company’s income shall be computed as if that were the commencement or, as the case may be, discontinuance of the trade, whether or not the trade is in fact commenced or discontinued.

- (2) Subject <sup>F2</sup>. . . to any other provision of the Corporation Tax Acts which expressly authorises such a deduction, no deduction shall be made in computing income from any source—
- (a) in respect of dividends or other distributions; nor
  - (b) in respect of any [<sup>F3</sup>annuity or other annual payment which is not interest] or in respect of any such other payments as are mentioned in section 348(2), but not including sums which are, or but for any exemption would be, chargeable under Schedule A.

[<sup>F4</sup>(2A) In computing any profits or losses of a company in accordance with the provisions of this Act applicable to Case I of Schedule D, subsection (2)(b) above shall not prevent the deduction of any annuity or other annual payment which is payable by a company wholly or partly in satisfaction of any claim under an insurance policy in relation to which the company is the insurer.

(2B) The reference in subsection (2A) above to an annuity payable wholly or partly in satisfaction of a claim under an insurance policy shall be taken, in relation to an insurance company (within the meaning of Chapter I of Part XII), to include a reference to every annuity payable by that company; and [<sup>F5</sup>the reference in section 338(2)] to an annuity paid wholly or partly as mentioned in subsection (2A) above shall be construed accordingly.]

- (3) <sup>F6</sup>.....

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#### Textual Amendments

- F2** Words in s. 337(2) 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 (with Sch. 15)
- F3** Words in s. 337(2)(b) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 14(1) (with Sch. 15)
- F4** S. 337(2A)(2B) inserted (with effect in accordance with s. 165(4)(5) of the amending Act) by Finance Act 1996 (c. 8), s. 165(1)
- F5** Words in s. 337(2B) substituted (with effect in accordance with s. 67(7) of the amending Act) by Finance Act 1997 (c. 16), s. 67(4)(b)
- F6** S. 337(3) repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para. 14(2), Sch. 41 Pt. 5(3), Note (with Sch. 15)

#### Marginal Citations

- M1** Source-1970 s.251

### 337A Interest payable by companies.

No deduction shall be made in respect of interest in computing a company's income from any source except in accordance with Chapter II of Part IV of the Finance Act 1996 (loan relationships).

### 338 Allowance of charges on income and capital.

- (1) <sup>M2</sup>Subject to sections 339, 494 and 787, in computing the corporation tax chargeable for any accounting period of a company any charges on income paid by the company in the accounting period, so far as paid out of the company's profits brought into charge to corporation tax, shall be allowed as deductions against the total profits for the period as reduced by any other relief from tax, other than group relief.
- (2) <sup>M3</sup>Subject to the following subsections, [<sup>F7</sup>to section 339] and to any other express exceptions, "charges on income" means for the purposes of corporation tax—
- (a) payments of any description mentioned in subsection (3) below, not being dividends or other distributions of the company; and
- (b) payments which are qualifying donations (within the meaning of section 339); but no payment which is deductible in computing profits or any description of profits for purposes of corporation tax [<sup>F8</sup>nor any annuity or other annual payment which (without being so deductible) is paid wholly or partly as mentioned in section 337(2A)] shall be treated as a charge on income.
- (3) <sup>M4</sup>Subject to subsections (4) to (6) below, the payments referred to in subsection (2) (a) above are—
- (a) [<sup>F9</sup>any annuity or annual payment payable otherwise than in respect of any of the company's loan relationships] and any such other payments as are mentioned in section 348(2) but not including sums which are or, but for any exemption would be, chargeable under Schedule A,<sup>F10</sup> . . .

<sup>F10</sup> . . . . .

- (4) No such payment as is mentioned in subsection (3)(a) above made by a company to a person not resident in the United Kingdom shall be treated as a charge on income unless the company is so resident and either—

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- (a) <sup>M5</sup>the company deducts income tax from the payment in accordance with section 349, and accounts under Schedule 16 for the tax so deducted, or
  - (b) <sup>F11</sup> .....
  - (c) <sup>F11</sup> .....
  - (d) the payment is one payable out of income brought into charge to tax under Case IV or V of Schedule D.
- (5) <sup>M6</sup>No such payment made by a company as is mentioned in subsection (3) above shall be treated as a charge on income if—
- (a) the payment <sup>F12</sup> . . . , is charged to capital or the payment is not ultimately borne by the company; or
  - (b) the payment is not made under a liability incurred for a valuable and sufficient consideration (and, in the case of a company not resident in the United Kingdom, incurred wholly and exclusively for the purposes of a trade [<sup>F13</sup>which is or is to be] carried on by it in the United Kingdom through a branch or agency), and is not a covenanted donation to charity (within the meaning of section 339).
- (6) <sup>F14</sup> .....
- (7) <sup>M7</sup>Any payment to which section 125(1) applies shall not be charge on income for the purposes of corporation tax.

#### Textual Amendments

- F7** Words in s. 338(2) substituted (in relation to accounting periods beginning on or after 19.3.1991) by virtue of Finance Act 1991 (c. 31, SIF 63:1), s. 71(2)(3)
- F8** Words in s. 338(2) inserted (with effect in accordance with s. 165(4)(5) of the amending Act) by Finance Act 1996 (c.8), s. 165(2)
- F9** Words in s. 338(3)(a) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 16(2)(a) (with Sch. 15)
- F10** S. 338(3)(b) (together with word preceding and words following) repealed (with effect in accordance with s. 105(1) of the repealing Act) by virtue of Finance Act 1996 (c. 8), Sch. 14 para. 16(2)(b), Sch. 41 Pt. 5(3), Note (with Sch. 15)
- F11** S. 338(4)(b)(c) repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para. 16(3), Sch. 41 Pt. 5(3), Note (with Sch. 15)
- F12** Words in s. 338(5)(a) repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para. 16(4), Sch. 41 Pt. 5(3), Note (with Sch. 15)
- F13** Words in s. 338(5)(b) inserted (27.7.1993 with effect as mentioned in s. 109(4) of the amending Act) by 1993 c. 34, s. 109(3)(4)
- F14** S. 338(6) repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para. 16(5), Sch. 41 Pt. 5(3), Note (with Sch. 15)

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

- C1** See 1988 s.494—Oil Taxation Acts—restriction of relief against income from oil extraction activities or oil rights.
- C2** See—1981 s.127—Oil Taxation Acts—deduction of supplementary petroleum duty.1988 s.500—Oil Taxation Acts—deduction of petroleum revenue tax in computing income.Housing Subsidies Act 1967 (c.29) ss.24(2)and 26(4) (reproduced in Part II Vol.5)—approved housing association not entitled to relief for interest subsidised under that Act.
- C3** See 1989 s.116—certain interest on Eurobonds to Netherlands Antilles subsidiaries made on or after 1 April 1989.

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#### Marginal Citations

- M2 Source-1970 s.248(1); 1986 s.29
- M3 Source-1970 s.248(2); 1986 s.29
- M4 Source-1970 s.248(3); 1973 s.54(1)(a); 1981 s.38(1)
- M5 Source-1970 s.248(4); 1972 Sch.24 20
- M6 Source-1970 s.248(5); 1981 s.38(2)
- M7 Source-1977 s.48(1)

### 338A Charges on income: loans to buy land.

F15 .....

#### Textual Amendments

- F15 S. 338A repealed (with effect in accordance with s. 105(1) of the repealing Act) by [Finance Act 1996](#) (c. 8), Sch. 14 para. 17, [Sch. 41 Pt. 5\(3\)](#), Note (with Sch. 15)

### 339 Charges on income: donations to charity.

- (1) <sup>M8</sup>A qualifying donation is a payment made by a company to a charity, other than—
- (a) a covenanted payment [<sup>F16</sup>of a sum of money] to charity, as defined in [<sup>F17</sup>section 347A(7)]; and
  - (b) a payment which is deductible in computing profits or any description of profits for purposes of corporation tax.
- (2) <sup>M9</sup>A qualifying donation shall not constitute a charge on the income of the company unless a claim is made by the company and the company is resident in the United Kingdom *and is not a close company*<sup>F18</sup>.
- (3) <sup>M10</sup>A payment made by a company is not a qualifying donation unless, on the making of it, the company deducts out of it a sum representing the amount of income tax on it.
- [<sup>F19</sup>(3A) A payment made by a close company is not a qualifying donation if it is of a sum which leaves less than [<sup>F20</sup>£250] after deducting income tax under subsection (3) above.
- (3B) A payment made by a close company is not a qualifying donation if—
- (a) it is made subject to a condition as to repayment, or
  - (b) the company or a connected person receives a benefit in consequence of making it and either the relevant value in relation to the payment exceeds two and a half per cent of the amount given after deducting tax under section 339(3) or the amount to be taken into account for the purposes of this paragraph in relation to the payment exceeds £250.
- (3C) For the purposes of subsections (3B) above and (3D) below, the relevant value in relation to a payment to a charity is—
- (a) where there is one benefit received in consequence of making it which is received by the company or a connected person, the value of that benefit;
  - (b) where there is more than one benefit received in consequence of making it which is received by the company or a connected person, the aggregate value of all the benefits received in consequence of making it which are received by the company or a connected person.

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- (3D) The amount to be taken into account for the purposes of subsection (3B)(b) above in relation to a payment to a charity is an amount equal to the aggregate of—
- (a) the relevant value in relation to the payment, and
  - (b) the relevant value in relation to each payment already made to the charity by the company in the accounting period in which the payment is made which is a qualifying donation within the meaning of this section.
- (3E) A payment made by a close company is not a qualifying donation if it is conditional on, or associated with, or part of an arrangement involving, the acquisition of property by the charity, otherwise than by way of gift, from the company or a connected person.
- (3F) A payment made by a company is not a qualifying donation unless the company gives to the charity to which the payment is made a certificate in such form as the Board may prescribe and containing—
- (a) in the case of any company, a statement to the effect that the payment is one out of which the company has deducted tax under subsection (3) above, and
  - (b) in the case of a close company, a statement to the effect that the payment satisfies the requirements of subsections (3A) to (3E) above.
- (3G) A payment made by a company is not a qualifying donation if the company is itself a charity.]
- (4) Where, with a view to securing relief under section 338 a company makes a payment subject to such a deduction as is mentioned in subsection (3) above, then, whether or not it proves to be a qualifying donation, the payment—
- (a) shall be treated as a relevant payment for the purposes of Schedule 16; and
  - (b) shall in the hands of the recipient (whether a charity or not) be treated for the purposes of this Act as if it were an annual payment.
- (5) *In any accounting period of a company, the maximum amount allowable under section 338 by virtue of subsection (2)(b) of that section in respect of qualifying donations made by the company shall be a sum equal to 3 per cent. of the dividends paid on the company's ordinary share capital in that accounting period<sup>F21</sup>.*
- (6) <sup>M11</sup>A covenanted donation to charity shall not be regarded for the purposes of the definition of “charges on income” in section 338, or for any of the other purposes of the Corporation Tax Acts, as being, by reason of any provision of this Act, a distribution.
- (7) <sup>M12</sup>Notwithstanding anything in any other provision of the Tax Acts, a covenanted donation to charity made by a company shall not be a charge on income for the purposes of section 338 unless the company—
- (a) deducts out of it a sum representing the amount of income tax on it; and
  - (b) accounts for that tax in accordance with Schedule 16;
- and any such payment from which a deduction is made as mentioned in paragraph (a) above shall be treated as a relevant payment for the purposes of Schedule 16, whether or not it would otherwise fall to be so treated.
- [<sup>F22</sup>(7AA) Where—
- (a) a covenanted donation to a charity is made by a company which is wholly owned by a charity,
  - (b) the requirements of subsection (7) above for that donation to be regarded as a charge on income are satisfied,

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- (c) the disposition or covenant under which the donation is made required it to be made in an accounting period of the company which ended before the time when it is in fact made, and
- (d) the donation is made within nine months of the end of that period,
- the donation shall be deemed for the purposes of section 338 to be a charge on income paid in the accounting period in which it was required to be made, and not in any later period.
- (7AB) For the purposes of this section a company is wholly owned by a charity if it is either—
- (a) a company with an ordinary share capital every part of which is owned by a charity (whether or not the same charity); or
- (b) a company limited by guarantee in whose case every person who—
- (i) is beneficially entitled to participate in the divisible profits of the company, or
- (ii) will be beneficially entitled to share in any net assets of the company available for distribution on its winding up,
- is or must be a charity or a company wholly owned by a charity.
- (7AC) For the purposes of subsection (7AB) above ordinary share capital of a company shall be taken to be owned by a charity if there is a charity which—
- (a) within the meaning of section 838 directly or indirectly owns that share capital; or
- (b) would be taken so to own that share capital if references in that section to a body corporate included references to a charity which is not a body corporate.]
- [<sup>F23</sup>(7A) In subsections (3B) to (3E) above references to a connected person are to a person connected with—
- (a) the company, or
- (b) a person connected with the company;
- and section 839 applies for the purposes of this subsection.]
- (8) <sup>M13</sup>In this section “covenanted donation to charity” means a payment under a disposition or covenant made by the company in favour of a charity whereby the like annual payments (of which the donation is one) become payable for a period which may exceed three years and is not capable of earlier termination under any power exercisable without the consent of the persons for the time being entitled to the payments.
- (9) <sup>M14</sup>For the purposes of this section “charity” includes [<sup>F24</sup>each of the bodies mentioned in section 507, and in subsections (1) to [<sup>F25</sup>(4)] above includes] any Association of a description specified in section 508, but, subject to that, in this section “charity” has the same meaning as in section 506.

#### Textual Amendments

**F16** 1990 s.26(2) in relation to payments made on or after 1 October 1990.

**F17** Words in s. 339(1)(a) substituted (with effect and application in accordance with s. 74 of the amending Act) by Finance Act 1995 (c. 4), Sch. 17 para. 3

**F18** Words repealed by 1990 ss.26(3) and 132 and Sch. 19 Part IV in relation to payments made on or after 1 October 1990.

**F19** 1990 s.26(4) in relation to payments made on or after 1 October 1990.

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- F20** Word in [s. 339\(3A\)](#) substituted (27.7.1993 with application in relation to payments made on or after 16.3.1993) by [1993 c. 34, s. 67\(1\)\(3\)](#)
- F21** Repealed by 1990 ss.27(2) and 132 and Sch. 19 Part IV in relation to accounting periods ending on or after 1 October 1990.
- F22** [S. 337\(7AA\)-\(7AC\)](#) inserted (with effect in accordance with [s. 64\(2\)](#) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 64\(1\)](#)
- F23** 1990 s.26(5) in relation to payments made on or after 1 October 1990.
- F24** 1989 s.60(2) in respect of payments due on or after 14 March 1989. Previously “the Trustees of the National Heritage Memorial Fund and the Historic Buildings and Monuments Commission for England and, additionally, in subsections (1) to (5) above includes the Trustees of the British Museum, the Trustees of the British Museum (Natural History) and”.
- F25** 1990 s.27(2). Previously “(5)”.

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

- C4** See 1990 s.94 re production of books etc. in respect of repayment claims in respect of payments made on or after 1 October 1990.

**Marginal Citations**

- M8** Source-1986 s.29(1), (2)
- M9** Source-1986 s.29(1)
- M10** Source-1986 s.29(3)-(5)
- M11** Source-1970 s.248(8); 1972 Sch.24 20
- M12** Source-1970 s.248(8A); 1986 s.30(2)
- M13** Source-1970 s.248(a); 1980 s.55(3)
- M14** Source-1981 s.49; 1983 s.46(3); 1986 s.29(6)

[<sup>F26F27</sup>**339A**.....  
.....]

**Textual Amendments**

- F26** [S. 339A](#) inserted (in relation to accounting periods ending on or after 1 October 1990) by [Finance Act 1990 \(c. 29\), s. 27\(3\)\(4\)](#)
- F27** [S. 339A](#) repealed (in relation to accounting periods beginning on or after 19.3.1991) by [Finance Act 1991 \(c. 31\), ss. 71\(1\)\(3\), 123, Sch. 19 Pt. V](#), Note 5; and [s. 339A](#) modified in its application to accounting periods beginning before 19.3.1991 and ending on or after that date by [s. 71\(4\)](#) of that repealing Act

<sup>F28</sup>**340 Charges on income: interest payable to non-residents.**

**Textual Amendments**

- F28** [S. 340](#) repealed (with effect in accordance with [s. 105\(1\)](#) of the repealing Act) by [Finance Act 1996 \(c. 8\), Sch. 14 para. 17, Sch. 41 Pt. 5\(3\)](#), Note (with [Sch. 15](#))



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**F29 341 Payments of interest etc. between related companies.**

.....

**Textual Amendments**

**F29** S. 341 repealed (with effect in accordance with s. 105(1) of the repealing Act) by [Finance Act 1996](#) (c. 8), Sch. 14 para. 17, [Sch. 41 Pt. 5\(3\)](#), Note (with Sch. 15)

**342 Tax on company in liquidation.**

- (1) <sup>M15</sup>In this section references to a company’s final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company’s penultimate year are references to the last financial year preceding its final year.
- (2) <sup>M16</sup>Subject to subsection (3) below—
  - (a) corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at the rate of corporation tax fixed or proposed for the penultimate year; but
  - (b) where the corporation tax charged on the company’s income included in those profits falls to be calculated or reduced in accordance with section 13, it shall be so calculated or reduced in accordance with such rate or fraction fixed or proposed for the penultimate year as is applicable under that section.
- (3) If, before the affairs of the company are completely wound up, any of the rates or fractions mentioned in subsection (2) above has been fixed or proposed for the final year, that subsection shall have effect in relation to that rate or fraction as if for the references to the penultimate year there were substituted references to the final year.
- (4) <sup>M17</sup>An assessment on the company’s profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because made before the end of the accounting period.
- (5) In making an assessment after the commencement of the winding-up of the company but before the date when its affairs are completely wound up, [<sup>F30</sup>the liquidator may] act on an assumption as to when that date will fall, so far as it governs section 12(7).
- (6) The assumption of the wrong date shall not alter the company’s final and penultimate year, and, if the right date is later, an accounting period shall end on the date assumed, and a new accounting period shall begin and section 12(7) shall thereafter apply [<sup>F31</sup>as if the winding-up had commenced with the beginning of that new accounting period].
- (7) <sup>M18</sup>References in this section to a rate or fraction fixed or proposed are references to a rate or fraction fixed by an Act passed before the completion of the winding-up or, if not so fixed, proposed by a Budget resolution (and without regard to any subsequent Act); except that if a rate or fraction so fixed is proposed to be altered by a Budget resolution any such reference to it is a reference to it as proposed to be so altered.

In this subsection “Budget resolution” means a resolution of the House of Commons for fixing any such rate or fraction as is mentioned in this section.
- (8) Where the winding-up commenced before the company’s final year, paragraphs (a) and (b) of subsection (2) (but not subsection (3)) above shall apply in relation to the company’s profits arising at any time in its penultimate year.

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- (9) Any assessment made by virtue of section 8(4) shall be subject to any such adjustment by discharge or repayment of tax or by a further assessment as may be required to give effect to this section.

#### Textual Amendments

**F30** Words in s. 342(5) substituted (with effect in accordance with Sch. 24 para. 12(4) of the amending Act) by Finance Act 1996 (c. 8), Sch. 24 paras. 8(1), 9, 12(2); S.I. 1998/3173

**F31** Words in s. 342(6) substituted (with effect in accordance with Sch. 24 para. 12(4) of the amending Act) by Finance Act 1996 (c. 8), Sch. 24 paras. 8(1), 9, 12(3); S.I. 1998/3173

#### Marginal Citations

**M15** Source-1970 s.245(1)

**M16** Source-1970 s.245(2), (3); 1974 s.37(1)

**M17** Source-1970 s.245(4)-(6)

**M18** Source-1970 s.245(7)-(9); 1974 s.37(1)

VALID FROM 10/07/2003

### **[<sup>F32</sup>342A Tax on companies in administration**

- (1) In this section—
- (a) references to the relevant event, in relation to a company in administration, are references—
    - (i) to the administrator sending a notice in respect of the company under paragraph 84(1) of Schedule B1 to the Insolvency Act 1986 (company moving from administration to dissolution), or
    - (ii) in the case of a company which enters administration otherwise than under that Act, to the doing of any other act for a like purpose, and
  - (b) references to a company's final year are references to the financial year in which the relevant event occurs, and references to the company's penultimate year are references to the last financial year preceding its final year.
- (2) Subject to subsections (3) and (4)—
- (a) corporation tax shall be charged on the profits of the company arising in the administration in its final year at the rate of corporation tax fixed or proposed for the penultimate year, but
  - (b) where the corporation tax charged on the company's income included in those profits falls to be calculated or reduced in accordance with section 13, it shall be so calculated or reduced in accordance with such rate or fraction fixed or proposed for the penultimate year as is applicable under that section.
- (3) If, before the relevant event, any of the rates or fractions mentioned in subsection (2) has been fixed or proposed for the final year, that subsection shall have effect in relation to that rate or fraction as if for the references to the penultimate year there were substituted references to the final year.

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- (4) If, in the case of the company's final accounting period, the income (if any) which consists of interest received or receivable by the company under section 826 does not exceed £2,000, that income shall not be subject to corporation tax.
- (5) In subsection (4) "the company's final accounting period" means the last accounting period of the company before the relevant event.
- (6) An assessment on the company's profits for an accounting period in which the company is in administration shall not be invalid because made before the end of the accounting period.
- (7) In making an assessment after the company enters administration and before the date of the relevant event, the administrator may act on an assumption as to when that date will fall so far as it governs section 12(3).
- (8) The assumption of the wrong date shall not alter the company's final and penultimate year and, if the right date is later—
  - (a) an accounting period shall end on the date assumed and a new accounting period shall begin, and
  - (b) thereafter, section 12(3) shall apply as if the company had entered administration at the beginning of that new accounting period.
- (9) Subsections (7) and (9) of section 342 apply in relation to this section as they apply in relation to that section, except that in subsection (7) of that section the reference to the completion of the winding up is to be read as a reference to the relevant event.
- (10) Where the company entered administration before its final year, paragraphs (a) and (b) of subsection (2) (but not subsection (3)) apply in relation to the company's profits arising at any time in its penultimate year.]

#### Textual Amendments

**F32** S. 342A inserted (with effect in accordance with Sch. 41 para. 5(1) of the amending Act) by Finance Act 2003 (c. 14), Sch. 41 para. 3

### 343 Company reconstructions without a change of ownership.

- (1)<sup>M19</sup>Where, on a company ("the predecessor") ceasing to carry on a trade, another company ("the successor") begins to carry it on, and—
  - (a) on or at any time within two years after that event the trade or an interest amounting to not less than a three-fourths share in it belongs to the same persons as the trade or such an interest belonged to at some time within a year before that event; and
  - (b) the trade is not, within the period taken for the comparison under paragraph (a) above, carried on otherwise than by a company which is within the charge to tax in respect of it;

then the Corporation Tax Acts shall have effect subject to subsections (2) to (6) below.

In paragraphs (a) and (b) above references to the trade shall apply also to any other trade of which the activities comprise the activities of the first mentioned trade.

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- (2) <sup>M20</sup>The trade shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by the Capital Allowances Acts; but—
- (a) there shall be made to or on the successor in accordance with those Acts all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on it; and
  - (b) the amount of any such allowance or charge shall be computed as if—
    - (i) the successor had been carrying on the trade since the predecessor began to do so, and
    - (ii) everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the trade is made to the successor by the predecessor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).

The preceding provisions of this subsection shall not apply if the successor is a dual resident investing company (within the meaning of section 404) which begins to carry on the trade after 31st March 1987.

- (3) <sup>M21F33</sup> . . . , subject to subsection (4) below and to any claim made by the predecessor under section [<sup>F34</sup>393A(1)], the successor shall be entitled to relief under section 393(1), as for a loss sustained by the successor in carrying on the trade, for any amount for which the predecessor would have been entitled to <sup>F35</sup> . . . relief if it had continued to carry on the trade.
- (4) <sup>M22</sup>Where the amount of relevant liabilities exceeds the value of relevant assets, the successor shall be entitled to relief by virtue of subsection (3) above only if, and only to the extent that, the amount of that excess is less than the amount mentioned in that subsection.

This subsection does not apply where the predecessor ceased to carry on the trade or part of a trade before 19th March 1986 nor, in a case where subsection (7) below applies, in relation to any earlier event, within the meaning of that subsection, which occurred before that date (but without prejudice to its application in relation to any later event which occurred on or after that date).

- (5) <sup>M23</sup>Any securities, within the meaning of section 731, which at the time when the predecessor ceases to carry on the trade form part of the trading stock belonging to the trade shall be treated for the purposes of that section as having been sold at that time in the open market by the predecessor and as having been purchased at that time in the open market by the successor.

<sup>F36</sup>(6) . . . . .

- (7) Where the successor ceases to carry on the trade within the period taken for the comparison under subsection (1)(a) above and on its doing so a third company begins to carry on the trade, <sup>F37</sup> . . . , subsections (2) to [<sup>F38</sup>(5)] above shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that—
- (a) in relation to the earlier event “successor” shall include the successor at either event; and
  - (b) in relation to the later event “predecessor” shall include the predecessor at either event;

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and if the conditions of this subsection are thereafter again satisfied, it shall apply again in like manner.

- (8) Where, on a company ceasing to carry on a trade, another company begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the successor shall be treated for the purposes of this section as a separate trade, if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade; and where, on a company ceasing to carry on part of a trade, another company begins to carry on the activities of that part as its trade or part of its trade, the predecessor shall for purposes of this section be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade.
- (9) <sup>M24</sup>Where under subsection (8) above any activities of a company's trade fall, on the company ceasing or beginning to carry them on, to be treated as a separate trade, such apportionments of receipts, expenses, assets or liabilities shall be made as may be just.
- (10) <sup>M25</sup>Where, by virtue of subsection (9) above, any item 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 companies, any question which arises as to the manner in which the item is to be apportioned shall be determined, for the purposes of the tax of all those companies—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those companies, by those Commissioners, unless all the companies 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 companies, by such of those bodies as the Board may direct, unless all the companies 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 companies 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.
- (11) Any relief obtainable under this section by way of discharge or repayment of tax shall be given on the making of a claim.
- (12) <sup>M26</sup>In the application of this section to any case in relation to which subsection (4) above does not apply—
- (a) subsection (9) above shall have effect with the substitution for the words following “separate trade” of the words “ any necessary apportionment shall be made of receipts or expenses ”; and
  - (b) subsection (10) above shall have effect with the substitution for “item” of “ sum ”.

#### Textual Amendments

- F33** Words in s. 343(3) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 7(1)(a), Sch. 19 Pt. V, Note 4
- F34** Words in s. 343(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch 15 para. 7(1)(b)(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

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- F35** Word in s. 343(3) repealed (with effect in relation to accounting periods ending after the day appointed for the purposes of s. 10 of 1988 c. 1) by 1993 c. 34, s. 213, **Sch. 23 Pt.III** and omitted (27.7.1993) by virtue of s. 120, Sch. 14 para. 8(2)
- F36** S. 343(6) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 7(2), Sch. 19 Pt. V, Note 4
- F37** Words in s. 343(7) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 7(3)(a), **Sch. 19 Pt. V**, Note 4
- F38** Words in s. 343(7) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 7(3)(b)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

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

- C5** S. 343 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para 12(2)** (with s. 43(6))
- C6** S. 343 excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), **Sch. 24 para. 20(8)**
- C7** S. 343(2) excluded (16.7.1992) by Capital Allowances Act 1990 (c. 1), s. 152B(10)(e) (as inserted (16.7.1992) by Finance Act 1992 (c. 48), s. 67).
- C8** S. 343(3) restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), **Sch. 24 para. 15(1)(a)(7)**
- C9** S. 343(3) restricted (11.1.1994 with retrospective effect) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 15(7)**

#### Marginal Citations

- M19** Source-1970 s.252(1)
- M20** Source-1970 s.252(2), (2A); 1971 Sch.8 16(5); 1986 s.56(7), Sch.13 2; 1987 (No.2) s.64(2)
- M21** Source-1970 s.252(3)-(7)
- M22** Source-1970 s.252(3A); 1986 s.42(2), (3), Sch.10 1(2)
- M23** Source-1970 s.252(4)-(7)
- M24** Source-1970 s.252(8); 1986 Sch.10 1(3)
- M25** Source-1970 s.252(9), (10)
- M26** Source-1986 s.42(2), (3)

VALID FROM 21/07/2008

### <sup>F39</sup>**343ZA** Transfers of trade to obtain balancing allowances

- (1) This section applies where—
- (a) a company (“the predecessor”) ceases to carry on a trade,
  - (b) another company (“the successor”) begins to carry on the activities of that trade as its trade or as part of its trade,
  - (c) in the accounting period in which the predecessor ceases to carry on the trade the predecessor would (apart from this section) be entitled under Part 2 of the Capital Allowances Act to a balancing allowance in respect of the trade, and
  - (d) the predecessor's ceasing to carry on the trade is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to entitle the predecessor to that balancing allowance.
- (2) This section also applies where—
- (a) a company (“the predecessor”) ceases to carry on part of a trade,

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- (b) another company (“the successor”) begins to carry on the activities of that part of the trade as its trade or as part of its trade, and
  - (c) the predecessor's ceasing to carry on the part of the trade mentioned in paragraph (a) is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to entitle the predecessor, on cessation of the trade, to a balancing allowance in respect of the trade under Part 2 of the Capital Allowances Act.
- (3) This section does not apply where section 343 applies.
- (4) Where this section applies, the Corporation Tax Acts have effect subject to section 343(2), but as if the words “and are subject to section 343A (company reconstructions involving business of leasing plant or machinery)” were omitted.
- (5) Where this section applies because of subsection (1), and the successor carries on the activities of the trade the predecessor ceased to carry on as part of the successor's trade, for the purposes of section 343(2) that part of the successor's trade is to be treated as a separate trade carried on by the successor.
- (6) Where this section applies because of subsection (2), for the purposes of section 343(2)—
- (a) that part of the trade which the predecessor ceased to carry on is to be treated as a separate trade carried on by the predecessor, and
  - (b) where the successor carries on the activities of that part of the trade as part of its trade, that part of the successor's trade is to be treated as a separate trade carried on by the successor.
- (7) Where subsection (5) or (6) applies, such apportionment of receipts, expenses, assets and liabilities is to be made as may be just.
- (8) Section 343(10) applies to an apportionment under subsection (7) as it applies to an apportionment under section 343(9).]

#### Textual Amendments

**F39** S. 343ZA inserted (with effect in accordance with s. 89(2) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 89\(1\)](#)

VALID FROM 19/07/2007

#### <sup>F40</sup> 343A Company reconstructions involving business of leasing plant or machinery

- (1) This section applies if the trade is or forms part of a business of leasing plant or machinery which the predecessor or the successor carries on on the day of cessation.
- (2) If, on the day of cessation, both the predecessor and the successor carry on the trade otherwise than in partnership, section 343(2) does not apply unless—
  - (a) the principal company or companies of the predecessor immediately before the cessation are the same as the principal company or companies of the successor immediately afterwards, and

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- (b) if any such principal company is a consortium principal company, the relevant fraction in relation to the predecessor immediately before the cessation is the same as the relevant fraction in relation to the successor immediately afterwards (irrespective of whether the members of each consortium are the same).
- (3) If, on the day of cessation, the predecessor or the successor carries on the trade in partnership, section 343(2) does not apply unless—
- (a) the predecessor ceases to carry on the whole of its trade, and
  - (b) that trade is a business of leasing plant or machinery which the predecessor carries on in partnership on the day of cessation.
- (4) In any case where section 343(2) does not apply as a result of this section, the plant or machinery belonging to the trade shall be treated for the purposes of the Corporation Tax Acts as sold by the predecessor to the successor on the day of the cessation for an amount equal to its market value as at that day.
- (5) In this section—
- “business of leasing plant or machinery”—
- (a) has the same meaning as in Part 2 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), and
  - (b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership),
- “consortium principal company” means a company which is a principal company as a result of paragraph 12 of that Schedule,
- “market value”, in relation to plant or machinery, is to be construed in accordance with paragraph 41(8) of that Schedule,
- “plant or machinery” has the same meaning as in Part 2 of the Capital Allowances Act,
- “principal company” is to be construed in accordance with paragraph 11 or (as the case may be) 12 of Schedule 10 to the Finance Act 2006, and
- “relevant fraction” has the same meaning as in paragraph 12 of that Schedule.]

#### Textual Amendments

**F40** S. 343A inserted (19.7.2007, the inserted subsections (2) and (3) having effect in accordance with Sch. 6 para. 1(3)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 6 para. 1(2)

### 344 Company reconstructions: supplemental.

<sup>M27</sup>(1) For the purposes of section 343—

- (a) a trade carried on by two or more persons shall be treated as belonging to them in the shares in which they are entitled to the profits of the trade;
- (b) a trade or interest in a trade belonging to any person as trustee (otherwise than for charitable or public purposes) shall be treated as belonging to the persons for the time being entitled to the income under the trust; and
- (c) a trade or interest in a trade belonging to a company shall, where the result of so doing is that subsection (1) or (7) of section 343 has effect in relation to an event, be treated in any of the ways permitted by subsection (2) below.



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- (2) For the purposes of section 343, a trade or interest in a trade which belongs to a company engaged in carrying it on may be regarded—
- (a) as belonging to the persons owning the ordinary share capital of the company and as belonging to them in proportion to the amount of their holdings of that capital, or
  - (b) in the case of a company which is a subsidiary company, as belonging to a company which is its parent company, or as belonging to the persons owning the ordinary share capital of that parent company, and as belonging to them in proportion to the amount of their holdings of that capital,
- and any ordinary share capital owned by a company may, if any person or body of persons has the power to secure by means of the holding of shares or the possession of voting power in or in relation to any company, or by virtue of any power conferred by the articles of association or other document regulating any company, that the affairs of the company owning the share capital are conducted in accordance with his or their wishes, be regarded as owned by the person or body of persons having that power.
- (3) For the purposes of subsection (2) above—
- (a) references to ownership shall be construed as references to beneficial ownership;
  - (b) a company shall be deemed to be a 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;
  - (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 section 838(5) to (10); and
  - (d) where any company is a subsidiary of another company, that other company shall be considered as its parent company unless both are subsidiaries of a third company.
- (4) In determining, for the purposes of section 343, whether or to what extent a trade belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose “relative” means husband, wife, ancestor, lineal descendant, brother or sister.
- (5) For the purposes of section 343(4), relevant assets are—
- (a) assets which were vested in the predecessor immediately before it ceased to carry on the trade, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 343, were not by virtue of subsection (9) of that section apportioned to a trade carried on by the company which was the successor on that application; and
  - (b) consideration given to the predecessor by the successor in respect of the change of company carrying on the trade;
- and for the purposes of paragraph (b) above the assumption by the successor of any liabilities of the predecessor shall not be treated as the giving of consideration to the predecessor by the successor.

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- (6) For the purposes of section 343(4), relevant liabilities are liabilities which were outstanding and vested in the predecessor immediately before it ceased to carry on the trade, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 343, were not by virtue of subsection (9) of that section apportioned to a trade carried on by the company which was the successor on that application; but a liability representing the predecessor's share capital, share premium account, reserves or relevant loan stock is not a relevant liability.
- (7) For the purposes of section 343(4)—
- (a) the value of assets (other than money) shall be taken to be the price which they might reasonably be expected to have fetched on a sale in the open market immediately before the predecessor ceased to carry on the trade; and
  - (b) the amount of liabilities shall be taken to be their amount at that time.
- (8) Where the predecessor transferred a liability to the successor but the creditor concerned agreed to accept settlement of part of the liability as settlement of the whole, the liability shall be treated for the purposes of subsection (6) above as not having been transferred to the successor except as to that part.
- (9) A liability representing the predecessor's share capital, share premium account, reserves or relevant loan stock shall, for the purposes of subsection (6) above, be treated as not doing so if, in the period of one year ending with the day on which the predecessor ceased to carry on the trade, the liability arose on a conversion of a liability not representing its share capital, share premium account, reserves or relevant loan stock.
- (10) Where a liability of the predecessor representing its relevant loan stock is not a relevant liability for the purposes of section 343(4) but is secured on an asset of the predecessor not transferred to the successor, the value of the asset shall, for the purposes of section 343(4), be reduced by an amount equal to the amount of the liability.
- (11) In this section “relevant loan stock” means any loan stock or similar security (whether secured or unsecured) except any in the case of which subsection (12) below applies.
- (12) This subsection applies where, at the time the liability giving rise to the loan stock or other security was incurred, the person who was the creditor was carrying on a trade of lending money.

**Marginal Citations**

**M27** Source-1970 s.253; 1986 s.42, Sch.10 2

**Status:**

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