



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVII

TAX AVOIDANCE

CHAPTER II

TRANSFERS OF SECURITIES

Miscellaneous provisions relating to securities

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

- (1) Subsection (2) below applies where a company has, as a dealing company, a holding in another company resident in the United Kingdom (being a body corporate), and—
- (a) the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in that company, and
 - (b) a distribution is, or two or more distributions are, made in respect of the holding, and
 - (c) the value (at any accounting date or immediately before realisation or appropriation) of any security comprised in the holding is materially reduced below the value of the security at the time when it was acquired, and the whole or any part of this reduction is attributable to any distribution falling within paragraph (b) above;

and in relation to any security comprised in the holding, the company having the holding is in subsection (2) below referred to as “the dealing company” and so much of any reduction in the value of the security as is attributable to any distribution falling within paragraph (b) above is in that subsection referred to as “the relevant reduction”.

- (2) Where this subsection applies, an amount equal to the relevant reduction in the value of a security comprised in the holding—

Status: This is the original version (as it was originally enacted).

- (a) shall, if and so long as the security is not realised or appropriated as mentioned below, be added to the value of the security for the purposes of any valuation;
 - (b) shall be treated, on any realisation of the security in the course of trade, as a trading receipt of the dealing company or, in the event of a partial realisation, shall be so treated to an appropriate extent, and
 - (c) shall be treated as a trading receipt of the dealing company if the security is appropriated in such circumstances that a profit on the sale of the security would no longer form part of the dealing company's trading profits.
- (3) References in this section to a holding in a company refer to a holding of securities by virtue of which the holder may receive distributions made by the company, but so that—
- (a) a company's holdings of different classes in another company shall be treated as separate holdings, and
 - (b) holdings of securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.
- (4) For the purposes of subsection (2) above—
- (a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and
 - (b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class;
- and section 839 shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words "or exercise control of" in each place where they occur there were inserted the words "or to acquire a holding in".
- (5) Where this section applies in relation to a distribution which consists of or includes interest to which section 732 applies, any reduction under that section in the price paid for the securities in respect of which the distribution is made shall be adjusted in such manner as seems appropriate to the Board to take account of subsection (2) above.
- (6) For the purposes of this section "security" includes a share or other right and a company is a "dealing company" in relation to a holding if a profit on a sale of the holding would be taken into account in computing the company's trading profits.

737 Manufactured dividends: treatment of tax deducted

- (1) Subject to the provisions of this section, where—
- (a) under a contract for the sale of securities one of the parties to the contract ("the dividend manufacturer") is required to pay to the other the amount of a periodical payment of interest on the securities, and
 - (b) the dividend manufacturer does not satisfy the following condition, that is to say, that he is entitled to that payment of interest either as the registered holder of the securities or from a person from whom the dividend manufacturer purchased them,
- section 350(1) and Schedule 16 shall apply as if the payment by the dividend manufacturer were an annual payment made, after due deduction of tax, wholly out of a source other than profits or gains brought into charge to income tax.

Status: This is the original version (as it was originally enacted).

- (2) Subsection (1) of this section shall not apply where otherwise than by virtue of section 476(5)(a) the interest in question is payable without deduction of tax or where, under the rules of the stock exchange governing the transaction, the payment required to be made in respect of the interest is of the amount of the interest before deduction of tax.
- (3) If for any chargeable period the liability to tax of a market maker is determined on the footing that any excess of his payments in respect of interest on securities over his receipts in respect thereof, being payments made or receipts accrued in pursuance of a contract for the sale or purchase of the securities, is to be treated for all the purposes of the Tax Acts as an annual payment made by him, then as respects that chargeable period subsection (1) above shall not apply to him if he sold or purchased the securities in the ordinary course of his business as a market maker in securities of the kind concerned.
- (4) Where the dividend manufacturer is resident in the United Kingdom and purchased the securities (otherwise than through a broker) from a person not so resident, then paragraph (b) of subsection (1) above shall have effect as if after the word “say” there were inserted the word “either” and as if for the words from “either as” to the end of the paragraph there were inserted the words “as the registered holder of the securities or that he shows that he acquired the securities, directly or indirectly, from a person who was so entitled to the payment”.
- (5) Where the dividend manufacturer in relation to such a contract as is mentioned in paragraph (a) of subsection (1) above is not resident in the United Kingdom, and the sale is effected through a broker, that subsection shall not apply; but unless the broker shows either—
- (a) that the dividend manufacturer was entitled to the payment of interest as the registered holder of the securities, or
 - (b) that the dividend manufacturer acquired the securities, directly or indirectly, from a person who was so entitled to the payment,
- section 350(1) shall apply as if the payment through the broker of the amount of the payment of interest were an annual payment by the broker made, after due deduction of tax, wholly out of such a source as is mentioned in subsection (1) above.
- (6) In this section—
- “broker”, in relation to securities, means a member of the Stock Exchange who carries on business in the United Kingdom and is not, at the time the contract is made, a market maker in securities of the kind concerned;
 - “market maker”, in relation to securities of a particular kind, means a person who—
 - (a) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of that kind at a price specified by him; and
 - (b) is recognised as doing so by the Council of the Stock Exchange;
- “securities” includes shares and stock;
- and references to a periodical payment of interest include references to a qualifying distribution and any dividend which is not a qualifying distribution.
- (7) In the application of this section in a case where the references in subsection (1) above to a periodical payment of interest are construed as references to a qualifying distribution, subsection (2) above shall be omitted.

Status: This is the original version (as it was originally enacted).

- (8) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred any such liability.