Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVIII

DOUBLE TAXATION RELIEF

Modifications etc. (not altering text)

C1 Pt. 18 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 20 para. 10** (as amended by Finance Act 1995 (c. 4), **s. 122(4)(5)**) (with Sch. 20 para. 12(2)(a))

C2 Pt. 18 applied (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 87**

C3 Pt. 18 modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 107(5)**

C4 Pt. 18 applied by Finance Act 1996 (c. 8), **Sch. 9 para. 12E(5)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(1) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(1)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 1 para. 16**)

C5 Pt. 18 applied by Finance Act 2002 (c. 23), **Sch. 26 para. 30E(5)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(1) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(1)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 1 para. 19**)

C6 Pt. 18 applied by Finance Act 1996 (c. 8), **Sch. 9 para. 12C(3)** (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 2 para. 8**)

C7 Pt. 18 applied by Finance Act 2002 (c. 23), **Sch. 26 para. 30C(3)** (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 2 para. 10**)

C8 Pt. 18 applied by Finance Act 2002 (c. 23), **Sch. 29 para. 87A(3)** (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 2 para. 12**)

C9 Pt. 18 applied by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 140H(3)**, 140I(3), 140J(3) (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 1**)

C10 Pt. 18 applied by Finance Act 1996 (c. 8), Sch. 9 paras. 12H(3), **12I(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 2**)

C11 Pt. 18 applied by Finance Act 2002 (c. 23), Sch. 26 paras. 30G(3), **30H(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 4**)

C12 Pt. 18 applied by Finance Act 2002 (c. 23), Sch. 29 paras. 85B(3), **85C(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 5**)

C13 Pt. 18: power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 533(2)(3)** (with Sch. 2 Pts. 1, 2)

C14 Pt. 18 modified (with effect in accordance with s. 56(3) of the modifying Act) by Finance Act 2009 (c. 10), **s. 56(1)**

[F1]CHAPTER I

THE PRINCIPAL RELIEFS

Textual Amendments

F1 Pt. 18 Chs. 1, 2 modified (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 277(1)**, 289 (with ss. 60, 101(1), 171, 201(3))

788 Relief by agreement with other countries.

[M1](1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been made with the government of any territory outside the United Kingdom with a view to affording relief from double taxation in relation to—

(a) income tax,

(b) corporation tax in respect of income or chargeable gains, and

(c) any taxes of a similar character to those taxes imposed by the laws of that territory,

and that it is expedient that those arrangements should have effect, then those arrangements shall have effect in accordance with subsection (3) below.

(2) Without prejudice to the generality of subsection (1) above, if it appears to Her Majesty to be appropriate, the arrangements specified in an Order in Council under this section may include provisions with respect to the exchange of information necessary for carrying out the domestic laws of the United Kingdom and the laws of the territory to which the arrangements relate concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and where arrangements do include any such provisions, the declaration in the Order in Council shall state that fact.

(3) Subject to the provisions of this Part, the arrangements shall, notwithstanding anything in any enactment, have effect in relation to income tax and corporation tax in so far as they provide—

(a) for relief from income tax, or from corporation tax in respect of income or chargeable gains; or

(b) for charging the income arising from sources, or chargeable gains accruing on the disposal of assets, in the United Kingdom to persons not resident in the United Kingdom; or

(c) for determining the income or chargeable gains to be attributed—

(i) to persons not resident in the United Kingdom and their agencies, branches or establishments in the United Kingdom; or

(ii) to persons resident in the United Kingdom who have special relationships with persons not so resident; or

(d) for conferring on persons not resident in the United Kingdom the right to a tax credit under section 231 in respect of qualifying distributions made to them by companies which are so resident.

(4) The provisions of Chapter II of this Part shall apply where arrangements which have effect by virtue of this section provide that tax payable under the laws of the territory concerned shall be allowed as a credit against tax payable in the United Kingdom.

(5) For the purposes of this section and, subject to section 795(3), Chapter II of this Part in its application to relief under this section, any amount of tax which would have been payable under the law of a territory outside the United Kingdom but for a relief to which this subsection applies given under the law of that territory shall be treated as having been payable; and references in this section and that Chapter to double taxation, to tax payable or chargeable, or to tax not chargeable directly or by deduction shall be construed accordingly.

This subsection applies—

(a) to any relief given with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, being a relief with respect to which provision is made in the arrangements in question for double taxation relief; and

(b) to any relief provided under and in accordance with the arrangements, where the latter expressly contemplate that the relief is to fall within this subsection.

(6) Except in the case of a claim for an allowance by way of credit in accordance with Chapter II of this Part, a claim for relief under subsection (3)(a) above shall be made to the Board.

(7) Where—

(a) under any arrangements which have effect by virtue of this section, relief may be given, either in the United Kingdom or in the territory with the government of which the arrangements are made, in respect of any income or chargeable gains, and

(b) it appears that the assessment to income tax or corporation tax made in respect of the income or chargeable gains is not made in respect of the full amount thereof, or is incorrect having regard to the credit, if any, which falls to be given under the arrangements,

any such assessments may be made as are necessary to ensure that the total amount of the income or chargeable gains is assessed, and the proper credit, if any, is given in respect thereof, and, where the income is, or the chargeable gains are, entrusted to any person in the United Kingdom for payment, any such assessment may be made on the recipient of the income or gains, and, in the case of an assessment in respect of income, may be assessed under Case VI of Schedule D.

(8) Any arrangements to which effect is given under this section may include provision for relief from tax for periods before the passing of this Act, or before the making of the arrangements, and provisions as to income or chargeable gains which is or are not subject to double taxation, and the preceding provisions of this section shall have effect accordingly.

(9) Any Order in Council made under this section revoking an earlier such Order in Council may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.

(10) Before any Order in Council proposed to be made under this section is submitted to Her Majesty in Council, a draft of the Order shall be laid before the House of Commons, and the Order shall not be so submitted unless an Address is presented to Her Majesty by that House praying that the Order be made.

Modifications etc. (not altering text)

C15 *See*—1970 ss.267, 273, 273A*and* 276(groups)—*disapplication of those provisions in the case of companies treated as resident outside the U.K. by virtue of* s.788.1989 s.115—*calculation of tax credit for non-resident on gross amount of distribution.*1990 s.32(8)—*application of* s.788*to assets held by employee share ownership trusts.*
S. 788 modified (27.7.1993) by 1993 c. 34, **s. 194(1)**

C16 *For List of Orders in Council see* Part III Vol.5.

Marginal Citations

M1 Source—1970 s.497(1)-(8); 1972 ss.98(2), 100(1); 1976 s.50(2); 1987 s.70(1)

789 Arrangements made under old law.

[M2](1) Notwithstanding section 793(2), any arrangements made in relation to the profits tax under section 347 of the [M3]Income Tax Act 1952 or any earlier enactment corresponding to that section shall, except in so far as arrangements made after the passing of the [M4]Finance Act 1965 provide otherwise, have effect in relation to corporation tax and income and gains chargeable to corporation tax as they are expressed to have effect in relation to the profits tax and profits chargeable to the profits tax, with the substitution of accounting periods for chargeable accounting periods (and not as they had effect in relation to income tax).

(2) In so far as any arrangements made before 30th March 1971 provide for the exemption of any income from surtax they shall have effect, unless otherwise modified by subsequent arrangements, as if they provided for that income to bear income tax at the basic rate and to be disregarded for the purpose of computing total income, except in so far as the computation affects the matters mentioned in section 835(5).

(3) Any reference in the Tax Acts (including this Part) to arrangements under or by virtue of section 788 includes a reference to arrangements having effect by virtue of this section.

Marginal Citations

M2 Source—1970 s.497(9), (10); 1971 sch.6 74; 1972 s.100(1)

M3 1952 c.10.

M4 1965 c. 25.

790 Unilateral relief.

(1) [M5]To the extent appearing from the following provisions of this section, relief from income tax and corporation tax in respect of income and chargeable gains shall be given in respect of tax payable under the law of any territory outside the United Kingdom by allowing that tax as a credit against income tax or corporation tax, notwithstanding that there are not for the time being in force any arrangements under section 788 providing for such relief.

(2) Relief under subsection (1) above is referred to in this Part as "unilateral relief".

(3) [M6]Unilateral relief shall be such relief as would fall to be given under Chapter II of this Part if arrangements with the government of the territory in question containing the provisions specified in subsections (4) to (10) below were in force by virtue of section 788, but subject to any particular provision made with respect to unilateral relief in that Chapter; and any expression in that Chapter which imports a reference to relief under arrangements for the time being having effect by virtue of that section shall be deemed to import also a reference to unilateral relief.

(4) [M7]Credit for tax paid under the law of the territory outside the United Kingdom and computed by reference to income arising or any chargeable gain accruing in that territory shall be allowed against any United Kingdom income tax or corporation tax computed by reference to that income or gain (profits from, or remuneration for, personal or professional services performed in that territory being deemed for this purpose to be income arising in that territory).

(5) Subsection (4) above shall have effect subject to the following modifications, that is to say—

(a) where the territory is the Isle of Man or any of the Channel Islands, the limitation to income or gains arising in the territory shall not apply;

(b) where arrangements with the government of the territory are for the time being in force by virtue of section 788, credit for tax paid under the law of the territory shall not be allowed by virtue of subsection (4) above in the case of any income or gains if any credit for that tax is allowable under those arrangements in respect of that income or those gains; and

(c) credit shall not be allowed by virtue of subsection (4) above for overseas tax on a dividend paid by a company resident in the territory unless—

(i) the overseas tax is directly charged on the dividend, whether by charge to tax, deduction of tax at source or otherwise, and the whole of it represents tax which neither the company nor the recipient would have borne if the dividend had not been paid; or

(ii) the dividend is paid to a company within subsection (6) below; or

(iii) the dividend is paid to a company to which section 802(1) applies and is a dividend of the kind described in that subsection.

(6) [M8]Where a dividend paid by a company resident in the territory is paid to a company resident in the United Kingdom which either directly or indirectly controls, or is a subsidiary of a company which directly or indirectly controls—

(a) not less than 10 per cent. of the voting power in the company paying the dividend; or

(b) less than 10 per cent. of the voting power in the company paying the dividend if—

(i) it has been reduced below that percentage on or after 1st April 1972; or

(ii) it has been acquired on or after that date in exchange for voting power in another company in respect of which relief under this subsection by virtue of paragraph (a) above was due prior to the exchange;

and the company receiving the dividend shows that the conditions specified in subsection (7) below are satisfied;

any tax in respect of its profits paid under the law of the territory by the company paying the dividend shall be taken into account in considering whether any, and if so what, credit is to be allowed in respect of the dividend.

In this subsection references to one company being a subsidiary of another are to be construed in accordance with section 792(2).

(7) The conditions referred to in subsection (6)(b) above are as follows—

(a) that the reduction below the 10 per cent. limit (and any further reduction) or, as the case may be, the exchange (and any reduction thereafter) could not have been prevented by any reasonable endeavours on the part of the company receiving the dividend and was due to a cause or causes not reasonably foreseeable by it when control of the relevant voting power was acquired; and

(b) no reasonable endeavours on the part of that company could have restored or, as the case may be, increased the voting power to not less than 10 per cent.

(8) In subsection (7) above references to the company receiving the dividend include references—

(a) to any company of which it is a subsidiary within the meaning of section 792(2); and

(b) where prior to the reduction or exchange the voting power in question was controlled otherwise than directly by the company receiving the dividend, to each other company relevant for determining whether that voting power was controlled as required by subsection (6)(a) above.

(9) In subsection (7) above "the relevant voting power" means the voting power by virtue of which relief was due under subsection (6)(a) above prior to the reduction or exchange or, where control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.

(10) In any case in which relief in respect of a dividend is due by virtue of subsection (6)(b) above, there shall be taken into account, as if it were tax payable under the law of the territory in which the company paying the dividend is resident, any tax that would be so taken into account under section 801 if the company paying the dividend and the company receiving it were related to each other within the meaning of section 801(5).

(11) [M9]Where—

(a) unilateral relief may by given in respect of any income or chargeable gain, and

(b) it appears that the assessment to income tax or corporation tax made in respect of the income or chargeable gain is not made in respect of the full amount thereof, or is incorrect having regard to the credit, if any, which falls to be given by way of unilateral relief,

any such assessments may be made as are necessary to ensure that the total amount of the income or chargeable gain is assessed, and the proper credit, if any, is given in

respect thereof, and, where the income is, or the chargeable gain is, entrusted to any person in the United Kingdom for payment, any such assessment may be made on the recipient of the income or gain, and, in the case of an assessment in respect of income, may be assessed under Case VI of Schedule D.

(12) In this section and in Chapter II of this Part in its application to unilateral relief, references to tax payable or paid under the law of a territory outside the United Kingdom include only references—

(a) to taxes which are charged on income and which correspond to United Kingdom income tax, and

(b) to taxes which are charged on income or chargeable gains and which correspond to United Kingdom corporation tax;

but for this purpose tax under the law of any such territory shall not be treated as not corresponding to income tax or corporation tax by reason only that it is payable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

Marginal Citations

M5 Source—1970 s.498(1); 1972 s.100(1)

M6 Source—1970 s.498(2)

M7 Source—1970 s.498(3); 1972 s.100(1)

M8 Source—1970 s.498(4); 1971 s.26(3); 1972 s.83(1)-(5)

M9 Source—1970 s.498(5), (6); 1972 s.100(1)

791 Power to make regulations for carrying out section 788.

[M10]The Board may from time to time make regulations generally for carrying out the provisions of section 788 or any arrangements having effect thereunder, and may in particular by those regulations provide—

(a) for securing that relief from taxation imposed by the laws of the territory to which any such arrangements relate does not enure for the benefit of persons not entitled to such relief; and

(b) for authorising, in cases where tax deductible from any payment has, in order to comply with any such arrangements, not been deducted, and it is discovered that the arrangements did not apply to that payment, the recovery of the tax by assessment on the person entitled to the payment or by deduction from subsequent payments.

Modifications etc. (not altering text)

C17 *For regulations see* Part III Vol.5

Marginal Citations

M10 Source—1970 s.517

CHAPTER II

RULES GOVERNING RELIEF BY WAY OF CREDIT

Modifications etc. (not altering text)

C18 Pt. 18 Chs. 1, 2 modified (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 277(1)**, 289 (with ss. 60, 101(1), 171, 201(3))

C19 *See* 1989 s.115—*calculation of tax credit for non-residents on gross amount of distribution.*

General

792 Interpretation of credit code.

[M11](1) In this Chapter, except where the context otherwise requires—

"arrangements" means any arrangements having effect by virtue of section 788;

"foreign tax" means, in relation to any territory, arrangements with the government of which have effect by virtue of section 788, any tax chargeable under the laws of that territory for which credit may be allowed under the arrangements;

"the United Kingdom taxes" means income tax and corporation tax;

"underlying tax" means, in relation to any dividend, tax which is not chargeable in respect of that dividend directly or by deduction; and

"unilateral relief" means relief under section 790.

(2) For the purposes of this Chapter one company is a subsidiary of another if the other company controls, directly or indirectly, not less than 50 per cent. of the voting power in the first company.

(3) Any reference in this Chapter to foreign tax shall be construed in relation to credit to be allowed under any arrangements as a reference only to tax chargeable under the laws of the territory with the government of which the arrangements were made.

Marginal Citations

M11 Source—1970 s.500

793 Reduction of United Kingdom taxes by amount of credit due.

[M12](1) Subject to the provisions of this Chapter, where under any arrangements credit is to be allowed against any of the United Kingdom taxes chargeable in respect of any income or chargeable gain, the amount of the United Kingdom taxes so chargeable shall be reduced by the amount of the credit.

(2) Nothing in subsection (1) above authorises the allowance of credit against any United Kingdom tax against which credit is not allowable under the arrangements.

Modifications etc. (not altering text)

C20 Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

Marginal Citations

M12 Source—1970 s.501; 1972 s.100 (1).

VALID FROM 28/07/2000

[F2 793A No double relief etc.

(1) Where relief in respect of an amount of tax that would otherwise be payable under the law of a territory outside the United Kingdom may be allowed—

(a) under arrangements made with the government of that territory, or

(b) under the law of that territory in consequence of any such arrangements,

credit may not be allowed in respect of that tax, whether the relief has been used or not.

(2) Where, under arrangements having effect by virtue of section 788, credit may be allowed in respect of an amount of tax, credit by way of unilateral relief may not be allowed in respect of that tax.

(3) Where arrangements made with the government of a territory outside the United Kingdom contain express provision to the effect that relief by way of credit shall not be given under the arrangements in cases or circumstances specified or described in the arrangements, then neither shall credit by way of unilateral relief be allowed in those cases or circumstances.**]**

Textual Amendments

F2 S. 793A inserted (with effect in accordance with Sch. 30 para. 5(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 5(1)**

794 Requirement as to residence.

M13(1) Subject to subsection (2) below, credit shall not be allowed under any arrangements against any of the United Kingdom taxes for any chargeable period unless the person in respect of whose income or chargeable gains the United Kingdom tax is chargeable is resident in the United Kingdom for that period.

(2) Credit may be allowed by way of unilateral relief—

(a) for tax paid under the law of the Isle of Man or any of the Channel Islands, if the person in question is, for the chargeable period in question, resident either in the United Kingdom or in the Isle of Man or any of the Channel Islands, as the case may be;

(b) for tax paid under the law of any territory and computed by reference to income from an office or employment the duties of which are performed

wholly or mainly in that territory, against income tax chargeable under Schedule E and computed by reference to that income, if the person in question is for the year of assessment in question resident either in the United Kingdom or that territory; and

(c) for tax paid under the law of any territory in respect of interest on a loan where the following conditions are fulfilled, namely—

(i) that the person in question is a company which, for the chargeable period in question, carries on a banking business in the United Kingdom through a branch or agency;

(ii) that the loan was made by the company through the branch or agency in the United Kingdom;

(iii) that the territory under whose law the tax was paid is not one in which the company is liable to tax by reason of domicile, residence or place of management; and

(iv) that the amount of relief claimed does not exceed (or is by the claim expressly limited to) that which would have been available if the branch or agency had been a company resident in the United Kingdom and the loan had been made by it in the course of its banking business.

Marginal Citations

M13 Source—1970 s.502; 1982 s.67; 1972 s.100(1).

795 Computation of income subject to foreign tax.

[M14](1) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income and income tax is payable by reference to the amount received in the United Kingdom, the amount received shall be treated for the purposes of income tax as increased by the amount of the foreign tax in respect of the income, including in the case of a dividend any underlying tax which under the arrangements is to be taken into account in considering whether any and if so what credit is to be allowed in respect of the dividend.

(2) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income or gain and subsection (1) above does not apply, then, in computing the amount of the income or gain for the purposes of income tax or corporation tax—

(a) no deduction shall be made for foreign tax, whether in respect of the same or any other income or gain; and

(b) the amount of the income shall, in the case of a dividend, be treated as increased by any underlying tax which, under the arrangements, is to be taken into account in considering whether any and if so what credit is to be allowed in respect of the dividend.

(3) The amount of any income or gain shall not be treated as increased under this section by reference to any foreign tax which, although not payable, falls to be taken into account for the purposes of section 788(5).

Marginal Citations

M14 Source—1970 s.503; 1972 s.100(1); 1987 Sch.15 2(18)

VALID FROM 28/07/2000

[F3795A Limits on credit: minimisation of the foreign tax.

(1) The amount of credit for foreign tax which, under any arrangements, is to be allowed against tax in respect of any income or chargeable gain shall not exceed the credit which would be allowed had all reasonable steps been taken—

(a) under the law of the territory concerned, and

(b) under any arrangements made with the government of that territory,

to minimise the amount of tax payable in that territory.

(2) The steps mentioned in subsection (1) above include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances; and

(b) making elections for tax purposes.

(3) For the purposes of subsection (1) above, any question as to the steps which it would have been reasonable for a person to take shall be determined on the basis of what the person might reasonably be expected to have done in the absence of relief under this Part against tax in the United Kingdom.**]**

Textual Amendments

F3 S. 795A inserted (with effect in accordance with Sch. 30 para. 6(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 6(1)**

796 Limits on credit: income tax.

M15(1) The amount of the credit for foreign tax which, under any arrangements, is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between the amounts of income tax which would be borne by him for the year (no credit being allowed for foreign tax **[**F4but allowing for the making of any other income tax reduction under the Income Tax Acts**]**)—

(a) if he were charged to tax on his total income for the year, computed in accordance with section 795; and

(b) if he were charged to tax on the same income, computed in the same way, but excluding the income in respect of which the credit is to be allowed.

(2) Where credit for foreign tax is to be allowed in respect of income from more than one source, subsection (1) above shall be applied successively to the income from each source, but so that on each successive application, paragraph (a) shall apply to the total income exclusive of the income to which the subsection has already been applied.

(3) Without prejudice to subsections (1) and (2) above, the total credit for foreign tax to be allowed to a person against income tax for any year of assessment under all arrangements having effect by virtue of section 788 shall not exceed the total income tax payable by him for that year of assessment, less any income tax which he is entitled to charge against any other person.

Textual Amendments

F4 Words in s. 796(1) inserted (with effect in accordance with s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 12**

Marginal Citations

M15 Source—1970 s.504

797 Limits on credit: corporation tax.

M16(1) The amount of the credit for foreign tax which under any arrangements is to be allowed against corporation tax in respect of any income or chargeable gain ("the relevant income or gain") shall not exceed the corporation tax attributable to the relevant income or gain, determined in accordance with subsections (2) and (3) below.

(2) M17Subject to subsection (3) below, the amount of corporation tax attributable to the relevant income or gain shall be treated as equal to such proportion of the amount of that income or gain as corresponds to the rate of corporation tax payable by the company (before any credit under this Part) on its income or chargeable gains for the accounting period in which the income arises or the gain accrues ("the relevant accounting period").

(3) Where in the relevant accounting period 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—

(a) the company may for the purposes of this section allocate the deduction in such amounts and to such of its profits for that period as it thinks fit; and

(b) the amount of the relevant income or gain shall be treated for the purposes of subsection (2) above as reduced or, as the case may be, extinguished by so much (if any) of the deduction as is allocated to it.

(4) Where in accordance with section 239 any advance corporation tax falls to be set against the company's liability to corporation tax on its profits (within the meaning of that section) for the relevant accounting period—

(a) so far as that liability relates to the relevant income or gain, it shall be taken to be reduced by the amount of the credit for foreign tax attributable to that income or gain, as determined in accordance with subsections (2) and (3) above; and

(b) the amount of advance corporation tax which may be set against that liability, so far as it relates to the relevant income or gain, shall not exceed whichever is the lower of the limits specified in subsection (5) below;

and section 239(2) shall have effect in relation only to so much of the profits of the company chargeable to corporation tax for that period as does not include the relevant income or gain.

(5) In relation to an amount of income or gain in respect of which the company's liability to corporation tax is taken to be reduced as mentioned in paragraph (a) of subsection (4) above, the limits referred to in paragraph (b) of that subsection are—

(a) the limit which would apply under section 239(2) if that amount of income or gain were the company's only income or gain for the relevant accounting period; and

(b) the amount of corporation tax for which, after taking account of that reduction, the company is liable in respect of that amount of income or gain.

Marginal Citations

M16 Source—1970 s.505; 1972 s.100(1), (3); 1984 s.53(1)

M17 Source—1972 s.100(4)-(6A); 1984 s.53(1); 1986 s.49; 1987 (No.2) s.77

VALID FROM 29/04/1996

[F5 797A Foreign tax on interest brought into account as a non-trading credit.

(1) This section applies for the purposes of any arrangements where, in the case of any company—

(a) any non-trading credit relating to an amount of interest is brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) for any accounting period ("the applicable accounting period"); and

(b) there is in respect of that amount an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax computed by reference to that interest.

(2) It shall be assumed that tax chargeable under paragraph (a) of Case III of Schedule D on the profits and gains arising for the applicable accounting period from the company's loan relationships falls to be computed on the actual amount of its non-trading credits for that period, and without any deduction in respect of non-trading debits.

(3) Section 797(3) shall have effect (subject to subsection (7) below) as if—

(a) there were for the applicable accounting period an amount equal to the adjusted amount of the non-trading debits falling to be brought into account by being set against profits of the company for that period of any description; and

(b) different parts of that amount might be set against different profits.

(4) For the purposes of this section, the adjusted amount of a company's non-trading debits for any accounting period is the amount equal, in the case of that company, to the aggregate of the non-trading debits given for that period for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) less the aggregate of the amounts specified in subsection (5) below.

(5) Those amounts are—

(a) so much of any non-trading deficit for the applicable accounting period as is an amount to which a claim under subsection (2)(b), (c) or (d) of section 83 of the Finance Act 1996 or paragraph 4(3) of Schedule 11 to that Act (group relief and transfer to previous or subsequent period of deficits) relates; **[**F6and**]**

(b) so much of any non-trading deficit for that period as falls to be carried forward to a subsequent period in accordance with subsection (3) of that section or paragraph 4(4) of that Schedule; F7. . .

(c) F7. . . . . .

[[F8]An amount carried forward to the applicable accounting period under section 83(3) of that Act shall not be treated as a non-trading deficit for that period for the purposes of paragraphs (a) and (b).**]**

(6) Section 797(3) shall have effect as if any amount **[**[F9]carried forward to the applicable accounting period in pursuance of a claim under section 83(2)(d) of that Act**]** were an amount capable of being allocated only to any non-trading profits of the company.

(7) Where—

(a) the company has a non-trading deficit for the applicable accounting period,

(b) the amount of that deficit exceeds the aggregate of the amounts specified in subsection (5) above, and

(c) in pursuance of a claim under—

(i) subsection (2)(a) of section 83 of the Finance Act 1996 (deficit set against current year profits), or

(ii) paragraph 4(2) of Schedule 11 to that Act (set-off of deficits in the case of insurance companies),

the excess falls to be set off against profits of any description,

section 797(3) shall have effect as if non-trading debits of the company which in aggregate are equal to the amount of the excess were required to be allocated to the profits against which they are set off in pursuance of the claim.

[[F10]An amount carried forward to the applicable accounting period under section 83(3) of the [M18]Finance Act 1996 shall be disregarded for the purposes of paragraphs (a) and (b).**]**

(8) In this section "non-trading profits" has the same meaning as in paragraph 4 of Schedule 8 to the Finance Act 1996.**]**

Textual Amendments

F5 S. 797A inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 43** (with Sch. 15)

F6 Word at the end of s. 797A(5)(a) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(b)(4)**

F7 S. 797A(5)(c) and preceding word repealed (retrospectively) by Finance Act 1998 (c. 36), s. 82(2)(b)(4), **Sch. 27 Pt. 3(17)**, Note

F8 Words at the end of s. 797A(5) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(c)(4)**

F9 Words in s. 797A(6) substituted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(d)(4)**

F10 Words at the end of s. 797A(7) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(e)(4)**

Marginal Citations

M18 1996 c. 8.

VALID FROM 24/07/2002

[F11]797B Foreign tax on items giving rise to a non-trading credit: intangible fixed assets

(1) This section applies for the purposes of any arrangements where, in the case of a company—

(a) a non-trading credit relating to an item is brought into account for the purposes of Schedule 29 to the Finance Act 2002 (intangible fixed assets) for an accounting period ("the applicable accounting period"), and

(b) there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax computed by reference to that item.

(2) It shall be assumed that tax chargeable under Case VI of Schedule D on the profits and gains arising for the applicable accounting period from the company's intangible fixed assets falls to be computed on the actual amount of its non-trading credits for that period, and without any deduction in respect of non-trading debits.

(3) Section 797(3) shall have effect as if—

(a) there were for the applicable accounting period an amount equal to the adjusted amount of the non-trading debits falling to be brought into account by being set against profits of the company for that period of any description, and

(b) different parts of that amount might be set against different profits.

(4) For this purpose the adjusted amount of a company's non-trading debits for an accounting period is given by:

$$\text{TotalDebits} - \text{AmountCarriedForward}$$

where—

Total Debits is the aggregate amount of the company's non-trading debits for that accounting period under Schedule 29 to the Finance Act 2002 (intangible fixed assets), and

Amount Carried Forward is the amount (if any) carried forward to the next accounting period of the company under paragraph 35(3) of that Schedule (carry-forward of non-trading loss in respect of which no claim is made for it to be set against total profits of current period).**]**

Textual Amendments

F11 S. 797B inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(4)**

Modifications etc. (not altering text)

C21 Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

798 Interest on certain overseas loans.

M19(1) This section applies in a case where—

(a) in any chargeable period the profits of any person ("the lender") which are brought into charge to income tax or corporation tax include an amount computed in accordance with section 795 in respect of interest ("foreign loan interest") on a loan made to a person resident outside the United Kingdom; and

(b) in determining the liability of the lender to income tax or corporation tax, expenditure related to the earning of the foreign loan interest is deductible in computing the profits referred to in paragraph (a) above; and

(c) the lender is entitled in accordance with this Chapter to credit for foreign tax chargeable on or by reference to the foreign loan interest;

and for the purpose only of determining whether the condition in paragraph (b) above is fulfilled in a case where the lender has in fact incurred no expenditure related to the earning of the foreign loan interest, it shall be assumed that he has incurred such expenditure.

(2) In subsection (1) above "interest", in relation to a loan, includes any introductory or other fee or charge which is payable in accordance with the terms on which the loan is made or is otherwise payable in connection with the making of the loan; and any reference in this section to foreign loan interest shall be construed accordingly.

(3) If in a case where this section applies the foreign tax referred to in subsection (1)(c) above is or includes an amount of spared tax, then for the purposes of income tax or corporation tax the amount which apart from this subsection would be the amount of the foreign loan interest shall be treated as increased by so much of the spared tax as does not exceed the permitted amount, as defined in subsection (4) below; but nothing in this subsection prejudices the operation of section 795 in relation to foreign tax which is not spared tax.

(4) In this section "spared tax" means foreign tax which although not payable falls to be taken into account for the purposes of credit by virtue of section 788(5); and the permitted amount, in relation to spared tax which is referable to the whole or any part of the foreign loan interest, is an amount which does not exceed—

(a) 15 per cent. of the interest to which the spared tax is referable, computed without regard to any increase under subsection (3) above; or

(b) if it is less, the amount of that spared tax for which, in accordance with any arrangements applicable to the case in question, credit falls to be given as mentioned in subsection (1)(c) above.

(5) If in a case where this section applies—

(a) the foreign tax referred to in subsection (1)(c) above is or includes an amount of tax which is not spared tax; and

(b) the amount of tax exceeds—

(i) the amount of the credit which, by virtue of this Chapter (but disregarding subsection (6) below), is allowed for that foreign tax against income tax or corporation tax; or

(ii) if it is less, 15 per cent. of the foreign loan interest, computed without regard to any increase or reduction under this section,

then, for the purposes of income tax or corporation tax, the amount which, apart from this subsection, would be the amount of the foreign loan interest shall be treated as reduced by a sum equal to the excess.

(6) Where this section applies, the amount of the credit for foreign tax referred to in subsection (1)(c) above which, in accordance with this Chapter, is to be allowed against income tax or corporation tax—

(a) shall be limited by treating the amount of the foreign loan interest (as increased or reduced under subsection (3) or (5) above) as reduced (or further reduced) for the purposes of this Chapter by an amount equal to so much of the

lender's financial expenditure in relation to the loan concerned as is properly attributable to the period for which the interest is paid; and

(b) shall not exceed 15 per cent. of the foreign loan interest, computed without regard to paragraph (a) above or to any increase under subsection (3) above or any reduction under subsection (5) above.

(7) For the purposes of this section the lender's financial expenditure in relation to a loan is the aggregate of—

(a) the financial expenses (consisting of interest or similar sums) incurred by the lender in or in connection with the provision of the loan, so far as those expenses consist of payments which either are charges on income for the purposes of corporation tax or are deductible in computing profits of the lender which are brought into charge to income tax or corporation tax; and

(b) where the loan is financed by the issue of securities at a discount by the lender, so much of the amount of the discount as either constitutes such a charge as is mentioned in paragraph (a) above or is deductible as mentioned in that paragraph; and

(c) so much as it is just and reasonable to attribute to the loan of any interest or other return foregone by a person connected or associated with the lender in connection with the provision of funds to the lender, either interest free or in other circumstances more favourable to the lender than if the parties were at arm's length; and

(d) any other sum, whether paid by way of refund of tax or interest or by way of commission, which—

(i) is paid by the lender or a person connected or associated with him;

(ii) is paid directly or indirectly to the borrower or a person connected or associated with him;

(iii) is deductible as mentioned in paragraph (a) above;

(iv) would not, apart from this paragraph, be taken into account in determining the amount of the foreign loan interest; and

(v) it is reasonable to regard as referable to the loan or the foreign loan interest (or both).

(8) In a case where the amount of the lender's financial expenditure in relation to a loan is not readily ascertainable, that amount shall be taken, subject to subsection (9) below, to be such sum as it is just and reasonable to attribute to the financing of the loan, having regard, in particular, to any market rates of interest by reference to which the rate of interest on the loan is determined.

(9) The Board may by regulations supplement subsection (8) above—

(a) by specifying matters to be taken into account in determining such a just and reasonable attribution as is referred to in that subsection; and

(b) by making provision with respect to the determination of market rates of interest for the purposes of that subsection;

and any such regulations may make different provision for different cases.

(10) For the purposes of this section—

(a) section 839 applies; and

(b) subsection (10) of section 783 applies as it applies for the purposes of that section.

(11) Where the loan on which the foreign loan interest is payable was made pursuant to an agreement entered into before 1st April 1987, this section shall have effect subject to the following modifications in relation to interest payable before 1st April 1989—

(a) in subsection (1) in paragraph (a) the words " in a territory " shall be inserted after "resident" and the words following paragraph (c) shall be omitted;

(b) subsection (2) shall be omitted;

(c) in subsection (5) for paragraph (b) there shall be substituted—

"(b) that amount of tax exceeds the amount of the credit which, by virtue of this Chapter and in particular subsection (6) below, is allowed for that foreign tax against income tax or corporation tax;" and

(d) for subsections (6) to (10) there shall be substituted—

"(6) Where this section applies, the amount of the credit for foreign tax referred to in subsection (1)(c) above which, in accordance with this Chapter, is to be allowed against income tax or corporation tax shall not exceed 15 per cent. of the foreign loan interest, computed without regard to any increase under subsection (3) or any reduction under subsection (5) above.";

but subject to that, this section applies whether the loan was made before or after the passing of this Act.

Modifications etc. (not altering text)
C22 *For regulations see* Part III Vol.5

Marginal Citations
M19 Source—1982 s.65; 1987 (No.2) s.67

VALID FROM 31/07/1998

[F12 798A Adjustments of interest and dividends for spared tax etc.

(1) In a case where section 798 applies—

(a) subsection (2) below applies if the foreign tax referred to in subsection (1)(b) of that section is or includes an amount of spared tax; and

(b) subsection (3) below applies if the foreign tax so referred to is or includes an amount of tax which is not spared tax.

(2) For the purposes of income tax or corporation tax, the amount which apart from this subsection would be the amount of the foreign interest or foreign dividends shall be treated as increased by so much of the spared tax as does not exceed—

(a) the amount of the spared tax for which, in accordance with any arrangements applicable to the case in question, credit falls to be given as mentioned in section 798(1)(b); or

(b) if it is less, 15 per cent. of the interest or dividends, computed without regard to any increase under this subsection.

(3) If the amount of tax which is not spared tax exceeds—

(a) the amount of the credit which, by virtue of this Chapter (but disregarding subsection (2) of section 798), is allowed for that tax against income tax or corporation tax; or

(b) if it is less in the case of tax on foreign interest, 15 per cent. of the interest, computed without regard to any increase or reduction under this section or that subsection,

then, for the purposes of income tax or corporation tax, the amount which, apart from this subsection, would be the amount of the foreign interest or foreign dividends shall be treated as reduced by a sum equal to the excess.

(4) Subsection (2) above has effect for the purposes of corporation tax notwithstanding anything in section 80(5) of the [M20]Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter II of Part IV of that Act).

(5) Nothing in subsection (2) above prejudices the operation of section 795 in relation to foreign tax which is not spared tax.

(6) In this section "spared tax" means foreign tax which although not payable falls to be taken into account for the purposes of credit by virtue of section 788(5).**]**

Textual Amendments

F12 S. 798A inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 104**

Marginal Citations

M20 1996 c. 8.

VALID FROM 31/07/1998

[F13798B Meaning of "financial expenditure".

(1) For the purposes of section 798 "financial expenditure", in relation to a qualifying taxpayer and any interest or dividends is, subject to the provisions of this section, the aggregate of—

(a) so much of the financial expenses (consisting of interest, discounts or similar sums or qualifying losses) incurred by the taxpayer or a person connected or associated with him as—

(i) is properly attributable to the earning of the interest or dividends; and

(ii) falls to be taken into account in computing the taxpayer's or person's liability to income tax or corporation tax; and

(b) so much of any other sum paid by the taxpayer or a person connected or associated with him which—

(i) falls to be taken into account as mentioned in paragraph (a) above; and

(ii) would not, apart from this paragraph, be taken into account in determining the amount of the interest or dividends,

as it is reasonable to regard as attributable to the earning of the interest or dividends (whether or not it would fall, in accordance with normal accountancy practice, to be so treated).

(2) There shall be deducted from the aggregate given by subsection (1) above so much of the qualifying gains and profits accruing to the qualifying taxpayer or a person connected or associated with him as—

(a) is properly attributable to the earning of the interest or dividends; and

(b) falls to be taken into account in computing the taxpayer's or person's liability to income tax or corporation tax.

(3) In a case where the amount of a qualifying taxpayer's financial expenditure in relation to the earning of the interest or dividends is not readily ascertainable—

(a) that amount shall be taken, subject to subsection (4) below, to be such sum as it is just and reasonable to attribute to the earning of the interest or dividends; and

(b) in the case of interest, regard shall be had in particular to any market rates of interest by reference to which the rate of the interest is determined.

(4) The Board may by regulations supplement subsection (3) above—

(a) by specifying matters to be taken into account in determining such a just and reasonable attribution as is referred to in paragraph (a); and

(b) by making provision with respect to the determination of market rates of interest for the purposes of paragraph (b);

and any such regulations may make different provision for different cases.

(5) In this section "qualifying losses" means—

(a) losses falling to be brought into account for the purposes of Chapter II of Part II of the [M21]Finance Act 1993 (exchange gains and losses) in accordance with sections 125 to 127 of that Act; and

(b) losses falling to be brought into account for the purposes of Chapter II of Part IV of the [M22]Finance Act 1994 (interest rate and currency contracts) in accordance with sections 155 to 158 of that Act;

and "qualifying gains" and "qualifying profits" shall be construed accordingly.**]**

Textual Amendments

F13 S. 798B inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 105**

Marginal Citations

M21 1993 c. 34.

M22 1994 c. 9.

VALID FROM 07/04/2005

[F14798CDisallowed credit: use as deduction

(1) This section applies where the application of section 796(1) or 797(1) prevents an amount of credit for foreign tax from being allowable against income tax or corporation tax.

(2) The amount of disallowed credit may be taken into account as a deduction in computing the taxpayer's liability for income tax or corporation tax, but only in so far as it does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid (for which purpose payment of the foreign tax is to be taken into account, despite section 795(2)).**]**

Textual Amendments

F14 Ss. 798-798C substituted for ss. 798-798B (with effect in accordance with s. 86(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 86(1)**

Modifications etc. (not altering text)

C23 Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

Tax underlying dividends

799 Computation of underlying tax.

M23(1) Where in the case of any dividend arrangements provide for underlying tax to be taken into account in considering whether any and if so what credit is to be allowed against the United Kingdom taxes in respect of the dividend, the tax to be taken into account by virtue of that provision shall be so much of the foreign tax borne on the relevant profits by the body corporate paying the dividend as is properly attributable to the proportion of the relevant profits represented by the dividend.

(2) Where under the foreign tax law the dividend has been increased for tax purposes by an amount to be set off against the recipient's own tax under that law or, to the extent that it exceeds his own tax thereunder, paid to him, then, from the amount of the underlying tax to be taken into account under subsection (1) above there is to be subtracted the amount of that increase.

(3) For the purposes of subsection (1) above the relevant profits, subject to subsection (4) below, are—

(a) if the dividend is paid for a specified period, the profits of that period;

(b) if the dividend is not paid for a specified period, but is paid out of specified profits, those profits; and

(c) if the dividend is paid neither for a specified period nor out of specified profits, the profits of the last period for which accounts of the body corporate were made up which ended before the dividend became payable.

(4) If, in a case falling under paragraph (a) or (c) of subsection (3) above, the total dividend exceeds the profits available for distribution of the period mentioned in that paragraph the relevant profits shall be the profits of that period plus so much of the profits available for distribution of preceding periods (other than profits previously distributed or previously treated as relevant profits for the purposes of this section or section 506 of the 1970 Act) as is equal to the excess; and for the purposes of this subsection the profits of the most recent preceding period shall first be taken into account, then the profits of the next most recent preceding period, and so on.

Marginal Citations
M23 Source—1970 s.506; 1976 s.50(3)

800 Dividends paid between related companies but not covered by arrangements.

M24 Where—

(a) arrangements provide, in relation to dividends of some classes but not in relation to dividends of other classes, that underlying tax is to be taken into account in considering whether any, and if so what, credit is to be allowed against the United Kingdom taxes in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide;

then, if the dividend is paid to a company which controls directly or indirectly, or is a subsidiary of a company which controls directly or indirectly, not less than 10 per cent. of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

Marginal Citations
M24 Source—1970 s.507; 1971 s.26(4)

801 Dividends paid between related companies: relief for U.K. and third country taxes.

M25 (1) Where a company resident outside the United Kingdom ("the overseas company") pays a dividend to a company resident in the United Kingdom ("the United Kingdom company") and the overseas company is related to the United Kingdom company, then for the purpose of allowing credit under any arrangements against corporation tax in respect of the dividend, there shall be taken into account, as if it were tax payable under the law of the territory in which the overseas company is resident—

(a) any United Kingdom income tax or corporation tax payable by the overseas company in respect of its profits; and

(b) any tax which, under the law of any other territory, is payable by the overseas company in respect of its profits.

(2) Where the overseas company has received a dividend from a third company and the third company is related to the overseas company, then, subject to subsection (4) below, there shall be treated for the purposes of subsection (1) above as tax paid by the overseas company in respect of its profits any underlying tax payable by the third

company, to the extent that it would be taken into account under this Part if the dividend had been paid by a company resident outside the United Kingdom to a company resident in the United Kingdom and arrangements had provided for underlying tax to be taken into account.

(3) Where the third company has received a dividend from a fourth company and the fourth company is related to the third company, then, subject to subsection (4) below, tax payable by the fourth company shall similarly be treated for the purposes of subsection (2) above as tax paid by the third company; and so on for successive companies each of which is related to the one before.

(4) Subsections (2) and (3) above are subject to the following limitations—

(a) no tax shall be taken into account in respect of a dividend paid by a company resident in the United Kingdom except United Kingdom corporation tax and any tax for which that company is entitled to credit under this Part; and

(b) no tax shall be taken into account in respect of a dividend paid by a company resident outside the United Kingdom to another such company unless it could have been taken into account under the other provisions of this Part had the other company been resident in the United Kingdom.

(5) For the purposes of this section a company is related to another company if that other company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

not less than 10 per cent. of the voting power in the first-mentioned company.

Marginal Citations

M25 Source—1970 s.508; 1971 s.26(2)

VALID FROM 19/03/1997

[F15 801A Restriction of relief for underlying tax.

(1) This section applies where—

(a) a company resident in the United Kingdom ("the United Kingdom company") makes a claim for an allowance by way of credit in accordance with this Part;

(b) the claim relates to underlying tax on a dividend paid to that company by a company resident outside the United Kingdom ("the overseas company");

(c) that underlying tax is or includes an amount in respect of tax ("the high rate tax") payable by—

(i) the overseas company, or

(ii) such a third, fourth or successive company as is mentioned in section 801,

at a rate in excess of the relievable rate; and

(d) the whole or any part of the amount in respect of the high rate tax which is or is included in the underlying tax would not be, or be included in, that underlying tax but for the existence of, or for there having been, an avoidance scheme.

(2) Where this section applies, the amount of the credit to which the United Kingdom company is entitled on the claim shall be determined as if the high rate tax had been tax at the relievable rate, instead of at a rate in excess of that rate.

(3) For the purposes of this section tax shall be taken to be payable at a rate in excess of the relievable rate if, and to the extent that, the amount of that tax exceeds the amount that would represent tax on the relevant profits at the relievable rate.

(4) In subsection (3) above "the relevant profits", in relation to any tax, means the profits of the overseas company or, as the case may be, of the third, fourth or successive company which, for the purposes of this Part, are taken to bear that tax.

(5) In this section "the relievable rate" means the rate of corporation tax in force when the dividend mentioned in subsection (1)(b) above was paid.

(6) In this section "an avoidance scheme" means any scheme or arrangement which—

(a) falls within subsection (7) below; and

(b) is a scheme or arrangement the purpose, or one of the main purposes, of which is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.

(7) A scheme or arrangement falls within this subsection if the parties to it include both—

(a) the United Kingdom company, a company related to that company or a person connected with the United Kingdom company; and

(b) a person who was not under the control of the United Kingdom company at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.

(8) In this section "arrangement" means an arrangement of any kind, whether in writing or not.

(9) Section 839 (meaning of "connected persons") applies for the purposes of this section.

(10) Subsection (5) of section 801 (meaning of "related company") shall apply for the purposes of this section as it applies for the purposes of that section.

(11) For the purposes of this section a person who is a party to a scheme or arrangement shall be taken to have been under the control of the United Kingdom company at all the following times, namely—

(a) any time when that company would have been taken (in accordance with section 416) to have had control of that person for the purposes of Part XI;

(b) any time when that company would have been so taken if that section applied (with the necessary modifications) in the case of partnerships and unincorporated associations as it applies in the case of companies; and

(c) any time when that person acted in relation to that scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of that company.**]**

Textual Amendments

F15 S. 801A inserted (with effect in accordance with s. 90(2) of the amending Act) by Finance Act 1997 (c. 16), **s. 90(1)**

VALID FROM 28/07/2000

[F16 801B Dividends paid out of transferred profits.

(1) This section applies where—

(a) a company ("company A") resident outside the United Kingdom has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits;

(b) some or all of those profits become profits of another company resident outside the United Kingdom ("company B") otherwise than by virtue of the payment of a dividend to company B; and

(c) company B pays a dividend out of those profits to another company ("company C"), wherever resident.

(2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid—

(a) by any company resident outside the United Kingdom (whether or not company B),

(b) to a company resident in the United Kingdom,

as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1)(b) above.

(3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom shall not exceed the amount which would have been allowable to that company had those profits become profits of company B by virtue of the payment of a dividend by company A to company B.**]**

Textual Amendments

F16 S. 801B inserted (with effect in accordance with Sch. 30 para. 12(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 12(1)**

VALID FROM 28/07/2000

[F17 801C Separate streaming of dividend so far as representing an ADP dividend of a CFC.

(1) This section applies in any case where—

(a) by virtue only of section 748(1)(a), no apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company; and

(b) one or more of the dividends paid by the controlled foreign company by virtue of which the condition in paragraph (a) above is satisfied are dividends falling within subsection (2) below.

(2) A dividend falls within this subsection if, for the purposes of Part I of Schedule 25, the whole or any part of it falls to be treated by virtue of paragraph 4 of that Schedule as paid by the controlled foreign company to a United Kingdom resident.

(3) If, in a case where this section applies,—

(a) an initial dividend is paid to a company resident outside the United Kingdom, and

(b) that company, or any other company which is related to it, pays an intermediate dividend which for the purposes of paragraph 4 of Schedule 25 to any extent represents that initial dividend,

subsection (4) below shall have effect in relation to the UK recipient concerned.

(4) Where this subsection has effect, it shall be assumed for the purposes of allowing credit relief under this Part to that UK recipient—

(a) that, instead of the intermediate dividend, the dividends described in subsection (5) below had been paid and the circumstances had been as described in subsection (6) or (7) below, as the case may be; and

(b) that any tax paid under the law of any territory in respect of the intermediate dividend, or which is underlying tax in relation to that dividend, had instead fallen to be borne accordingly (taking account of any reduction falling to be made under section 799(2)).

(5) The dividends mentioned in subsection (4)(a) above are—

(a) as respects each of the initial dividends which are, for the purposes of paragraph 4 of Schedule 25, to any extent represented by the intermediate dividend, a separate dividend (an "ADP dividend") representing, and of an amount equal to, so much of that initial dividend as is for those purposes represented by the intermediate dividend; and

(b) a further separate dividend (a "residual dividend") representing, and of an amount equal to, the remainder (if any) of the intermediate dividend.

(6) As respects each of the ADP dividends, the intermediate company is to be treated as if it were a separate company whose distributable profits are of a constitution corresponding to, and an amount equal to, that of the ADP dividend.

(7) As respects the residual dividend (if any), the relevant profits out of which it is to be regarded for the purposes of section 799(1) as paid by the intermediate company are, in consequence of subsection (6) above, to be treated as being of such constitution and amount as remains after excluding accordingly so much of those relevant profits as constitute the whole or any part of the distributable profits out of which the ADP dividends are paid.

(8) If, in a case where this section applies, an intermediate company also pays a dividend which is not an intermediate dividend (an "independent dividend") and either—

(a) that dividend is paid to a United Kingdom resident, or

(b) if it is not so paid, a dividend which to any extent represents it is paid by a company which is related to that company and resident outside the United Kingdom to a United Kingdom resident,

subsection (9) below shall have effect in relation to the United Kingdom resident.

(9) Where this subsection has effect, it shall be assumed for the purposes of allowing credit relief under this Part to the United Kingdom resident—

(a) that the relevant profits out of which the independent dividend is to be regarded for the purposes of section 799(1) as paid by the intermediate company are, in consequence of subsection (6) above, to be treated as being of such constitution and amount as remains after excluding so much of those relevant profits as constitute the whole or any part of the distributable profits out of which the ADP dividends are paid; and

(b) that any tax paid under the law of any territory in respect of the independent dividend, or which is underlying tax in relation to that dividend, had instead fallen to be borne accordingly (taking account of any reduction falling to be made under section 799(2)).

(10) For the purposes of this section—

(a) a controlled foreign company is an "ADP controlled foreign company" as respects any of its accounting periods if the condition in paragraph (a) of subsection (1) above is satisfied as respects that accounting period;

(b) an "initial dividend" (subject to subsection (14) below) is any of the dividends mentioned in paragraph (b) of subsection (1) above paid by an ADP controlled foreign company; and

(c) a "subsequent dividend" is any dividend which, in relation to one or more initial dividends, is the subsequent dividend for the purposes of paragraph 4 of Schedule 25.

(11) In this section—

"distributable profits" means a company's profits available for distribution, determined in accordance with section 799(6);

"intermediate company" means any company resident outside the United Kingdom which pays an intermediate dividend;

"intermediate dividend" means any dividend which is paid by a company resident outside the United Kingdom and which—

(a) for the purposes of paragraph 4 of Schedule 25, to any extent represents one or more initial dividends paid by other companies; and

(b) either is the subsequent dividend in the case of those initial dividends or is itself to any extent represented for those purposes by a subsequent dividend;

"the UK recipient" means the United Kingdom resident to whom a subsequent dividend is paid.

(12) Where—

(a) one company pays a dividend ("dividend A") to another company, and

(b) that other company, or a company which is related to it, pays a dividend ("dividend B") to another company,

then, for the purposes of this section, dividend B represents dividend A, and dividend A is represented by dividend B, to the extent that dividend B is paid out of profits which are derived, directly or indirectly, from the whole or part of dividend A.

(13) Sub-paragraph (2) of paragraph 4 of Schedule 25 (related companies) shall apply for the purposes of this section as it applies for the purposes of that paragraph.

(14) Where an intermediate company which is an ADP controlled foreign company pays a dividend—

(a) by virtue of which (whether taken alone or with other dividends) the condition in subsection (1)(a) above is satisfied as regards an accounting period of the company, but

(b) which also for the purposes of paragraph 4 of Schedule 25 to any extent represents one or more initial dividends paid by other ADP controlled foreign companies,

the dividend shall not be regarded for the purposes of this section as an initial dividend paid by the company, to the extent that it so represents initial dividends paid by other ADP controlled foreign companies.**]**

Textual Amendments

F17 S. 801C inserted (with effect in accordance with Sch. 30 para. 13(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 13(1)**

802 U.K. insurance companies trading overseas.

[M26](1) Subject to subsection (2) below, where—

(a) a company resident in the United Kingdom is charged to tax under Case I of Schedule D in respect of any insurance business carried on by it, and

(b) that business or any part of it is carried on through a branch or agency in a territory outside the United Kingdom,

then, in respect of dividends referable to that business which are paid to the company by companies resident in that territory, any tax payable by those companies in respect of their profits under the law of that or any other territory outside the United Kingdom, and any United Kingdom income tax or corporation tax so payable, shall, in considering whether any and if so what credit is to be allowed under any arrangements, be taken into account as tax so payable under the law of the first-mentioned territory is taken into account in a case falling within section 799.

(2) Credit shall not be allowed to a company by virtue of subsection (1) above for any financial year in respect of a greater amount of dividends paid by companies resident in any overseas territory than is equal to any excess of—

(a) the relevant fraction of the company's total income in that year from investments (including franked investment income **[**[F18], foreign income dividends**]** and group income) so far as referable to the business referred to in subsection (1) above; over

(b) the amount of the dividends so referable which are paid to it in the year by companies resident in that territory and in respect of which credit may, apart from subsection (1) above, be allowed to it for underlying tax.

(3) For the purposes of subsection (2) above the relevant fraction, in relation to any overseas territory, is—

$$\frac{A}{B}$$

where—

A is the company's local premium income in the financial year so far as referable to the business referred to in subsection (1) above;

B is the company's total premium income in the financial year so far as referable to that business;

and premium income shall be deemed to be local premium income in so far as it consists of premiums under contracts entered into at or through a branch or agency in that territory by persons not resident in the United Kingdom.

[F19(4) In this section "foreign income dividends" shall be construed in accordance with Chapter VA of Part VI.**]**

Textual Amendments

F18 Words in s. 802(2)(a) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 8(2)**

F19 S. 802(4) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 8(3)**

Modifications etc. (not altering text)

C24 S. 802 amended (27.7.1993 with application as mentioned in s. 78(11) of the amending Act) by 1993 c. 34, **s. 78(6)(11)**

Marginal Citations

M26 Source—1970 s.509

803 Underlying tax reflecting interest on loans.

M27(1) This section applies in a case where—

(a) a bank or a company connected with a bank makes a claim for an allowance by way of credit in accordance with this Chapter; and

(b) the claim relates to underlying tax on a dividend paid by the overseas company, within the meaning of section 801; and

(c) that underlying tax is or includes tax payable under the law of a territory outside the United Kingdom on or by reference to interest on a loan made in the course of its business by that overseas company or by such third, fourth or successive company as is referred to in subsection (2) or (3) of that section; and

(d) if the company which made the loan had been resident in the United Kingdom, then, in determining its liability to corporation tax, expenditure related to the earning of the interest on the loan would be deductible in computing the profits of the company brought into charge to tax.

(2) In a case where this section applies, the amount of the credit for that part of the foreign tax which consists of the tax referred to in subsection (1)(c) above shall not exceed an amount determined under subsection (3) below.

(3) The amount referred to in subsection (2) above is a sum equal to corporation tax, at the rate in force at the time the foreign tax referred to in paragraph (c) of subsection (1) above was chargeable, on so much of the interest on the loan as exceeds the amount of the lender's relevant expenditure which is properly attributable to the period for which that interest is paid.

(4) In subsection (3) above—

(a) "interest", subject to subsection (5) below, has the meaning assigned to it by section 798(2); and

(b) "the lender's relevant expenditure" means the amount which, if the company referred to in subsection (1)(d) above were resident in the United Kingdom (and liable to tax accordingly) would be its financial expenditure in relation to the loan, as determined in accordance with section 798(6) to (10).

(5) If, in accordance with subsection (6) or subsection (8) below, the amount of the dividend would be treated for the purposes of corporation tax as increased or reduced by any amount, then the amount which, apart from this subsection, would be the amount of the interest referred to in subsection (3) above shall be taken to be increased or reduced by the same amount as the dividend is so treated as increased or reduced.

(6) If, in a case where this section applies, the underlying tax is or includes an amount of spared tax, then, for the purposes of corporation tax, the amount which apart from this subsection would be the amount of the dividend shall be treated as increased by an amount equal to so much of that spared tax as does not exceed the permitted amount; but nothing in this subsection prejudices the operation of section 795 in relation to foreign tax which is not spared tax.

(7) In this section—

(a) "spared tax" has the same meaning as in section 798; and

(b) the permitted amount, in relation to spared tax which is referable to the whole or any part of the interest referred to in subsection (1)(c) above, is an amount which does not exceed—

(i) 15 per cent. of the interest to which that spared tax is referable; or

(ii) if it is less, the amount of that spared tax which under any arrangements is to be taken into account for the purpose of allowing credit against corporation tax in respect of the dividend concerned.

(8) If, in a case where this section applies—

(a) the underlying tax is or includes an amount of tax which is not spared tax, and

(b) that amount of tax exceeds 15 per cent. of the interest to which it is referable,

then, for the purposes of corporation tax, the amount which would apart from this subsection be the amount of the dividend shall be treated as reduced by a sum equal to the excess.

(9) Where this section applies, the amount of the credit referred to in paragraph (a) of subsection (1) above which is referable to the underlying tax payable as mentioned in paragraph (c) of that subsection shall not exceed 15 per cent. of so much of the interest referred to in that paragraph as is included in the relevant profits of the company paying the dividend; and for the purposes of this subsection—

(a) "relevant profits" has the same meaning as, by virtue of section 799, it has for the purposes of the computation of underlying tax; and

(b) the amount of the interest shall be determined without making any deduction in respect of any foreign tax.

(10) In subsection (1) above "bank" means a company carrying on, in the United Kingdom or elsewhere—

(a) a banking business; or

(b) another business which includes the making of loans where the circumstances of the business are such that, in determining the liability of the company to

corporation tax, expenditure related to the earning of the interest on those loans is deductible in computing the profits brought into charge to tax;

and section 839 applies for the purposes of subsection (1) above.

(11) Where the loan referred to in subsection (1)(c) was made pursuant to an agreement entered into before 1st April 1987, subsections (2) to (5) above shall not apply in relation to tax payable as mentioned in subsection (1)(c) above by reference to interest payable before 1st April 1989, but subject to that, this section applies whenever the loan referred to in subsection (1)(c) was made.

Marginal Citations

M27 Source—1982 s.66; 1987 (No.2) s.68

VALID FROM 28/07/2000

[F20 803A Foreign taxation of group as a single entity.

(1) This section applies in any case where, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in that territory ("the responsible company") in respect of the aggregate profits, or aggregate profits and aggregate gains, of that company and one or more other companies so resident, taken together as a single taxable entity.

(2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1) above (the "non-resident companies") to another company ("the recipient company"), as if—

(a) the non-resident companies, taken together, were a single company,

(b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and

(c) that single company were related to the recipient company, if that one of the non-resident companies which actually pays the dividend is related to the recipient company,

(so that, in particular, the relevant profits for the purposes of section 799(1) is a single aggregate figure in respect of that single company and the foreign tax paid by the responsible company is foreign tax paid by that single company).

(3) For the purposes of this section a company is related to another company if that other company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

not less than 10 per cent. of the voting power in the first-mentioned company.**]**

Textual Amendments

F20 S. 803A inserted (with effect in accordance with Sch. 30 para. 15(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 15(1)**

Miscellaneous rules

804 Relief against income tax in respect of income arising in years of commencement.

M28(1) Subject to the provisions of this section, credit for overseas tax paid in respect of **[**F21any income which is an overlap profit**]** shall be allowed under this Part against United Kingdom income tax chargeable for any year of assessment in respect of that income if it would have been so allowed but for the fact that credit for that overseas tax had been allowed against the United Kingdom income tax chargeable in respect of that income for a previous year of assessment.

(2) The amount of credit to be allowed in respect of any income by virtue of this section for any year of assessment shall not exceed the difference between—

(a) the total credit allowable against income tax in respect of that income under this Part (including this section) for all years of assessment for which credit is so allowable; and

(b) the amount of credit which was in fact so allowed in respect of that income for any earlier year or years of assessment.

(3) The total credit so allowable in respect of any income for all those years of assessment shall be taken to be the amount of the overseas tax charged on that income, adjusted where the number of the United Kingdom periods of assessment exceeds the number of foreign periods of assessment, in the proportion which the former number bears to the latter, a period for which part only of the income is charged to tax being counted not as one period but as a fraction equal to the proportion which that part of the income bears to the whole of the income.

(4) Where the same income is charged to different overseas taxes for different foreign periods of assessment, subsection (3) above, so far as it relates to the adjustment of overseas tax, shall be applied separately to each of the overseas taxes, and the total credit allowable shall be the aggregate of those taxes after the making of any adjustments in accordance with that subsection as so applied.

[F22(5) Subsections (5A) and (5B) below apply where—

(a) credit against income tax for any year of assessment is allowed by virtue of subsection (1) above in respect of any income which is an overlap profit ("the original income"), and

(b) the original income or any part of it contributes to an amount which, by virtue of section 63A(1) or (3), is deducted in computing the profits or gains of a subsequent year of assessment ("the subsequent year").

(5A) The following shall be set off one against the other, namely—

(a) the difference between—

(i) the amount of the credit which, under this Part (including this section), has been allowed against income tax in respect of so much of the original income as contributes as mentioned in subsection (5) above, and

(ii) the amount of the credit which, apart from this section, would have been so allowed; and

(b) the amount of credit which, on the assumption that no amount were deducted by virtue of section 63A(1) or (3), would be allowable under this Part against income tax in respect of income arising in the subsequent year from the same source as the original income.

(5B) The person chargeable in respect of the income (if any) arising in the subsequent year from the same source as the original income shall—

(a) if the amount given by paragraph (a) of subsection (5A) above exceeds that given by paragraph (b) of that subsection, be treated as having received in that year a payment chargeable under Case VI of Schedule D of an amount such that income tax on it at the basic rate is equal to the excess; and

(b) if the amount given by paragraph (b) of subsection (5A) above exceeds that given by paragraph (a) of that subsection, be allowed for that year under this Part an amount of credit equal to the excess.

(5C) For the purposes of subsections (5) to (5B) above, it shall be assumed that, where an amount is deducted by virtue of section 63A(1), each of the overlap profits included in the aggregate of such profits contributes to that amount in the proportion which that overlap profit bears to that aggregate.**]**

(6) Any payment which a person is treated by virtue of subsection (5) above as having received shall not on that account constitute income of his for any of the purposes of the Income Tax Acts other than that subsection and in particular no part thereof shall constitute profits or gains brought into charge to income tax for the purposes of section 348.

(7) Any claim for relief by way of credit under subsection (1) above against income tax for any year of assessment shall be made within six years of the end of that year or, where there is more than one year of assessment in respect of which such relief may be given, within six years of the end of the later of them.

(8) In this section—

[F23“overlap profit” means an amount of profits or gains which, by virtue of sections 60 to 62, is included in the computations for two successive years of assessment;**]**

“overseas tax” means tax under the law of a territory outside the United Kingdom;

F24 . . . . . .

“United Kingdom period of assessment” and “foreign period of assessment”, in relation to any income, mean respectively a year or other period for which under the relevant law the income falls to be charged to the relevant tax;

F24 . . . . . .

F25 . . . . . .; and

references to income arising in any year include, in relation to income the income tax on which is to be computed by reference to the amount of income received in the United Kingdom, references to income received in that year.

Textual Amendments

F21 Words in s. 804(1) substituted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 217(1)** (with Sch. 20 para. 12(1))

F22 S. 804(5)-(5C) substituted for s. 804(5) (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 217(2)** (with Sch. 20 para. 12(1))

F23 S. 804(8): definition of "overlap profit" inserted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 217(3)(a)** (with Sch. 20 para. 12(1))

F24 S. 804(8): definitions of "non-basis period" and "years of commencement" repealed (with effect in accordance with s. 218 of the repealing Act) by Finance Act 1994 (c. 9), s. 217(3)(b), **Sch. 26 Pt. 5(24)**, Note 7 (with Sch. 20 para. 12(1))

F25 Words in s. 804(8) repealed (with effect in accordance with s. 218 of the repealing Act) by Finance Act 1994 (c. 9), s. 217(3)(b), **Sch. 26 Pt. 5(24)**, Note 7 (with Sch. 20 para. 12(1))

Marginal Citations

M28 Source—1970 s.510; 1971 Sch.6 75

VALID FROM 07/04/2005

[F26 804ZA Schemes and arrangements designed to increase relief

(1) If the Board consider, on reasonable grounds, that conditions A to D are or may be satisfied in relation to any income or chargeable gain taken or to be taken into account for the purposes of determining a person's liability to tax in a chargeable period, they may give the person a notice under this section.

(2) Condition A is that, in the case of the person, there is in respect of the income or gain an amount of foreign tax for which, under any arrangements, credit is allowable against United Kingdom tax for that chargeable period.

(3) Condition B is that there is a scheme or arrangement the main purpose, or one of the main purposes, of which is to cause an amount of foreign tax to be taken into account in the case of the person for that chargeable period.

(4) Condition C is that the scheme or arrangement is a prescribed scheme or arrangement.

(5) Condition D is that the amount referred to in subsection (6) is more than a minimal amount.

(6) The amount is the aggregate of—

(a) the aggregate amount of the claims for credit that the person has made, or is in a position to make, for the chargeable period; and

(b) for all the persons connected to that person, the aggregate amount of the claims for credit that the connected person has made, or is in a position to make, for a corresponding chargeable period.

(7) A chargeable period of a person ("A") corresponds to a chargeable period of another person ("B") if at least one day of A's chargeable period falls within B's chargeable period.

(8) A notice under this section is a notice—

(a) informing the person of the Board's view under subsection (1),

(b) specifying the chargeable period in relation to which the Board formed that view,

(c) if the amount of foreign tax considered by the Board to satisfy condition B is an amount of underlying tax, specifying the body corporate resident in a territory outside the United Kingdom whose payment of foreign tax is relevant to that underlying tax, and

(d) informing the person that as a consequence section 804ZB has effect in relation to him.

(9) A notice under this section may specify the adjustments of a person's tax return that, in the view of the Board, fall to be made by him under section 804ZB(2).

(10) The adjustments specified may, in a case where the notice given to a person specifies a body corporate resident outside the United Kingdom, include treating the body corporate as having paid or being liable to pay only so much foreign tax as would have been allowed to it as a credit if it were resident in the United Kingdom and a notice under this section had been given to it as regards an amount of foreign tax.

(11) Schedule 28AB makes provision about what constitutes a prescribed scheme or arrangement.

(12) In this section and sections 804ZB and 804ZC "tax return" means—

(a) a return under section 8, 8A or 12AA of the Management Act, or

(b) a company tax return;

and "company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to the Finance Act 1998, as read with paragraph 4 of that Schedule.**]**

Textual Amendments

F26 Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 87(1)**

VALID FROM 07/04/2005

[F26 804ZB Effect of notice under section 804ZA

(1) This section applies in relation to a person if—

(a) a notice under section 804ZA has been given to the person in respect of a chargeable period specified in the notice, and

(b) the chargeable period specified is a chargeable period in relation to which conditions A to D of section 804ZA are satisfied.

(2) The person must in his tax return for the period make (or must amend his return for the period so as to make) such adjustments as are necessary for counteracting the effects of the scheme or arrangement in that period that are referable to the purpose referred to in condition B of section 804ZA.**]**

Textual Amendments

F26 Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 87(1)**

VALID FROM 07/04/2005

[F26 804ZC Notices under section 804ZA: further provision

(1) Subsection (2) applies if the Board give a notice to a person under section 804ZA before the person has made his tax return for the chargeable period specified in the notice.

(2) If the person makes a tax return for that period before the end of the period of 90 days beginning with the day on which the notice is given, he may—

(a) make a tax return that disregards the notice, and

(b) at any time after making the return and before the end of the period of 90 days, amend the return for the purpose of complying with the notice.

(3) If a person has made a tax return for a chargeable period, the Board may only give him a notice under section 804ZA in relation to that period if a notice of enquiry has been given to him in respect of his tax return for that period.

(4) After any enquiries into the person's tax return for that period have been completed, the Board may only give him a notice under section 804ZA in relation to that period if the requirements in subsections (5) and (7) are satisfied.

(5) The first requirement is that at the time the enquiries were completed, the Board could not have been reasonably expected, on the basis of the information made available to them or to an officer of theirs before that time, to have been aware that the circumstances were such that a notice under section 804ZA could have been given to the person in relation to that period.

(6) For the purposes of subsection (5)—

(a) section 29(6) and (7) of the Management Act (information made available) applies as it applies for the purposes of section 29(5), and

(b) paragraph 44(2) and (3) of Schedule 18 to the Finance Act 1998 applies as it applies for the purposes of paragraph 44(1).

(7) The second requirement is that—

(a) the person was requested to produce, provide or furnish information during an enquiry into the return for that period, and

(b) if the person had duly complied with the request, the Board could have been reasonably expected to give the person a notice under section 804ZA in relation to that period.

(8) If a person is given a notice under section 804ZA in relation to a chargeable period after having made a tax return for that period, the person may amend the return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with the day on which the notice is given.

(9) If the notice under section 804ZA is given to the person after he has been given a notice of enquiry in respect of his tax return for the period, no closure notice may be given in relation to his tax return until—

(a) the end of the period of 90 days beginning with the day on which the notice under section 804ZA is given, or

(b) the earlier amendment of the return for the purpose of complying with the notice.

(10) If the notice under section 804ZA is given to the person after any enquiries into the return for the period are completed, no discovery assessment may be made as regards the income or chargeable gain to which the notice relates until—

(a) the end of the period of 90 days beginning with the day on which the notice under section 804ZA is given, or

(b) the earlier amendment of the return for the purpose of complying with the notice.

(11) Subsections (2)(b) and (8) do not prevent a person's tax return for a chargeable period becoming incorrect if—

(a) a notice under section 804ZA is given to the person in relation to that period,

(b) the return is not amended in accordance with subsection (2)(b) or (8) for the purpose of complying with the notice, and

(c) the return ought to have been so amended.

(12) In this section—

"closure notice" means a notice under—

(a) section 28A or 28B of the Management Act, or

(b) paragraph 32 of Schedule 18 to the Finance Act 1998;

"discovery assessment" means an assessment under—

(a) section 29 of the Management Act, or

(b) paragraph 41 of Schedule 18 to the Finance Act 1998;

"notice of enquiry" means a notice under—

(a) section 9A or 12AC of the Management Act, or

(b) paragraph 24 of Schedule 18 to the Finance Act 1998.**]**

Textual Amendments

F26 Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 87(1)**

[F27 804A Overseas life assurance business: restriction of credit.

(1) Subsection (2) below applies where credit for tax which is payable under the laws of a territory outside the United Kingdom and computed otherwise than wholly by reference to profits arising in that territory is to be allowed (in accordance with this Part) against corporation tax charged by virtue of section 441 in respect of the profits of a company's overseas life assurance business for an accounting period.

(2) Where this subsection applies, the amount of the credit shall not exceed the greater of—

(a) any such part of the tax payable under the laws of the territory outside the United Kingdom as is charged by reference to profits arising in that territory, and

(b) the shareholders' share of the tax so payable.

(3) For the purposes of subsection (2) above the shareholders' share of tax payable under the laws of a territory outside the United Kingdom is so much of that tax as is represented by the fraction

$$\frac{A}{B}$$

where—

A is an amount equal to the profits of the company for the period which are chargeable to tax under section 441; and

B is an amount equal to the excess of—

(a) the amount taken into account as receipts of the company in computing those profits, apart from premiums and sums received by virtue of a claim under a reinsurance contract, over

(b) the amounts taken into account as expenses and interest in computing those profits.

(4) Where there is no such excess as is mentioned in subsection (3) above, or where the profits are greater than any excess, the whole of the tax payable under the laws of the territory outside the United Kingdom shall be the shareholders' share; and (subject to that) where there are no profits, none of it shall be the shareholders' share.

(5) Where, by virtue of this section, the credit for any tax payable under the laws of a territory outside the United Kingdom is less than it otherwise would be, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the profits of the overseas life assurance business.**]**

Textual Amendments

F27 S. 804A inserted (with effect in accordance with Sch. 7 para. 10 of the amending Act) by Finance Act 1990 (c. 29), **Sch. 7 para. 5**

VALID FROM 28/07/2000

[F28 804B Insurance companies carrying on more than one category of business: restriction of credit.

(1) Where—

(a) an insurance company carries on more than one category of business in an accounting period, and

(b) there arises to the company in that period any income or gain ("the relevant income") in respect of which credit for foreign tax falls to be allowed under any arrangements,

subsection (2) below shall have effect.

(2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable (in accordance with the provisions of sections 432ZA to 432E) to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with the following provisions of this section, is attributable to that category of business.

(3) Where the relevant income arises from an asset—

(a) which is linked solely to a category of business (other than overseas life assurance business), or

(b) which is an asset of the company's overseas life assurance fund,

the whole of the foreign tax is attributable to the category mentioned in paragraph (a) above or, as the case may be, to the company's overseas life assurance business, unless the case is one where subsection (7) below applies in relation to the category of business in question.

(4) Where subsection (3) above does not apply and the category of business in question is—

(a) basic life assurance and general annuity business, or

(b) long term business which is not life assurance business,

the fraction of the foreign tax that is attributable to that category of business is the fraction whose numerator is the part of the relevant income which is referable to that category by virtue of any provision of section 432A and whose denominator is the whole of the relevant income.

(5) Subsections (6) and (7) below apply where the category of business in question is neither—

(a) basic life assurance and general annuity business; nor

(b) long term business which is not life assurance business.

(6) Where—

(a) subsection (3) above does not apply, and

(b) some or all of the relevant income is taken into account in accordance with section 83 of the [M29]Finance Act 1989 in an account in relation to which the provisions of section 432C or 432D apply,

the fraction of the foreign tax that is attributable to the category of business in question is the fraction whose numerator is the part of the relevant income which is referable to that category by virtue of any provision of section 432C or 432D and whose denominator is the whole of the relevant income.

(7) Where some or all of the relevant income falls to be taken into account in determining in accordance with section 83(2) of the Finance Act 1989 the amount referred to in section 432E(1) as the net amount, the fraction of the foreign tax that is attributable to the category of business in question is the fraction—

(a) whose numerator is the part of that net amount which is referable by virtue of section 432E to that category; and

(b) whose denominator is the whole of that net amount.

(8) No part of the foreign tax is attributable to any category of business except as provided by subsections (3) to (7) above.

(9) Where for the purposes of this section an amount of foreign tax is attributable to a category of life assurance business other than basic life assurance and general annuity business, credit in respect of the foreign tax so attributable shall be allowed only against corporation tax in respect of profits chargeable under Case VI of Schedule D arising from carrying on that category of business.**]**

Textual Amendments

F28 S. 804B inserted (with effect in accordance with Sch. 30 para. 17(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 17(1)**

Modifications etc. (not altering text)

C25 S. 804B modified (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30C** (as inserted by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1**, 6; and as amended by S.I. 2004/822, **regs. 1**, 25)

Marginal Citations

M29 1989 c. 26.

VALID FROM 28/07/2000

[F29 804C Insurance companies: allocation of expenses etc in computations under Case I of Schedule D.

(1) Where—

(a) an insurance company carries on any category of insurance business in a period of account,

(b) a computation in accordance with the provisions applicable to Case I of Schedule D falls to be made in relation to that category of business for that period, and

(c) there arises to the company in that period any income or gain in respect of which credit for foreign tax falls to be allowed under any arrangements,

subsection (2) below shall have effect.

(2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is to be allowed against corporation tax in respect of so much of that income or gain as is referable to the category of business concerned ("the relevant income") shall be limited by treating the amount of the relevant income as reduced in accordance with subsections (3) and (4) below.

(3) The first limitation is to treat the amount of the relevant income as reduced (but not below nil) for the purposes of this Chapter by the amount of expenses (if any) attributable to the relevant income.

(4) If—

(a) the amount of the relevant income after any reduction under subsection (3) above,

exceeds

(b) the relevant fraction of the profits of the category of business concerned for the period of account in question which are chargeable to corporation tax,

the second limitation is to treat the relevant amount as further reduced (but not below nil) for the purposes of this Chapter to an amount equal to that fraction of those profits.

In this subsection any reference to the profits of a category of business is a reference to those profits after the set off of any losses of that category of business which have arisen in any previous accounting period.

(5) In determining the amount of the credit for foreign tax which is to be allowed as mentioned in subsection (2) above, the relevant amount shall not be reduced except in accordance with that subsection.

(6) For the purposes of subsection (3) above, the amount of expenses attributable to the relevant income is the appropriate fraction of the total relevant expenses of the category of business concerned for the period of account in question.

(7) In subsection (6) above, the "appropriate fraction" means the fraction—

(a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above, and

(b) whose denominator is the total income of the category of business concerned for the period of account in question,

unless the denominator so determined is nil, in which case the denominator shall instead be the amount described in subsection (8) below.

(8) That amount is so much in total of the income and gains—

(a) which arise to the company in the period of account in question, and

(b) in respect of which credit for foreign tax falls to be allowed under any arrangements,

as are referable to the category of business concerned (before any reduction in accordance with subsection (2) above).

(9) In subsection (4) above, the "relevant fraction" means the fraction—

(a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above; and

(b) whose denominator is the amount described in subsection (8) above.

(10) Where a 75 per cent subsidiary of an insurance company is acting in accordance with a scheme or arrangement and—

(a) the purpose, or one of the main purposes, of that scheme or arrangement is to prevent or restrict the application of subsection (2) above to the insurance company, and

(b) the subsidiary does not carry on insurance business of any description,

the amount of corporation tax attributable (apart from this subsection) to any item of income or gain arising to the subsidiary shall be found by setting off against that item the amount of expenses that would be attributable to it under subsection (3) above if that item had arisen directly to the insurance company.

(11) Where the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is, by virtue of subsection (2) above, less than it would be if the relevant income were not treated as reduced in accordance with that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the profits of the category of business concerned.

(12) Where, by virtue of subsection (10) above, the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is less than it would be apart from that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the income of the 75 per cent subsidiary.

(13) Any reference in this section to any income or gain being to any extent referable to a category of insurance business shall, in the case of—

(a) life assurance business or any category of life assurance business, or

(b) long term business which is not life assurance business,

be taken as a reference to the income or gain being to that extent referable to that category of business for the purposes of Chapter I of Part XII.

(14) This section shall be construed—

(a) in accordance with section 804D, where the category of business concerned is life assurance business or a category of life assurance business; and

(b) in accordance with section 804E, where the category of business concerned is not life assurance business or any category of life assurance business.**]**

Textual Amendments

F29 Ss. 804C-804E inserted (with effect in accordance with Sch. 30 para. 18(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 18(1)**

VALID FROM 28/07/2000

[F29804D Interpretation of section 804C in relation to life assurance business etc.

(1) This section has effect for the interpretation of section 804C where the category of business concerned is life assurance business or a category of life assurance business.

(2) The “total income" of the category of business concerned for the period of account in question is the amount (if any) by which—

(a) so much of the total income shown in the revenue account in the periodical return of the company concerned for that period as is referable to that category of business,

exceeds

(b) so much of any commissions payable and any expenses of management incurred in connection with the acquisition of the business, as shown in that return, so far as referable to that category of business.

(3) Where any amounts fall to be brought into account in accordance with section 83 of the M30Finance Act 1989, the amounts that are referable to the category of business concerned shall be determined for the purposes of subsection (2) above in accordance with sections 432B to 432F.

(4) The “total relevant expenses" of the category of business concerned for any period of account is the amount of the claims incurred—

(a) increased by any increase in the liabilities of the company, or

(b) reduced (but not below nil) by any decrease in the liabilities of the company.

(5) For the purposes of subsection (4) above, the amounts to be taken into account in the case of any period of account are the amounts as shown in the company’s periodical return for the period so far as referable to the category of business concerned.**]**

Textual Amendments

F29 Ss. 804C-804E inserted (with effect in accordance with Sch. 30 para. 18(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 18(1)**

Modifications etc. (not altering text)

C26 S. 804D modified (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30D** (as inserted by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1**, 6; and as amended by S.I. 2004/822, **regs. 1**, 26)

C27 S. 804D modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 24

Marginal Citations

M30 1989 c. 26.

VALID FROM 28/07/2000

[F29 804E Interpretation of section 804C in relation to other insurance business.

(1) This section has effect for the interpretation of section 804C where the category of business concerned is not life assurance business or any category of life assurance business.

(2) The "total income" of the category of business concerned for any period of account is the amount (if any) by which—

(a) the sum of the amounts specified in subsection (3) below,

exceeds

(b) the sum of the amounts specified in subsection (4) below.

(3) The amounts mentioned in subsection (2)(a) above are—

(a) earned premiums, net of reinsurance;

(b) investment income and gains;

(c) other technical income, net of reinsurance;

(d) any amount treated under section 107(2) of the Finance Act 2000 as a receipt of the company's trade.

(4) The amounts mentioned in subsection (2)(b) above are—

(a) acquisition costs;

(b) the change in deferred acquisition costs;

(c) losses on investments.

(5) The "total relevant expenses" of the category of business concerned for any period of account is the sum of—

(a) the claims incurred, net of reinsurance,

(b) the changes in other technical provisions, net of reinsurance,

(c) the change in the equalisation provision, and

(d) investment management expenses,

unless that sum is a negative amount, in which case the total relevant expenses shall be taken to be nil.

(6) The amounts to be taken into account for the purposes of the paragraphs of subsections (3) to (5) above are the amounts taken into account for the purposes of corporation tax.

(7) Expressions used—

(a) in the paragraphs of subsections (3) to (5) above, and

(b) in the provisions of section B of Schedule 9A to the [M31]Companies Act 1985 (form and content of accounts of insurance companies and groups) which relate to the profit and loss account format (within the meaning of paragraph 7(1) of that section),

have the same meaning in those paragraphs as they have in those provisions.**]**

Textual Amendments

F29 Ss. 804C-804E inserted (with effect in accordance with Sch. 30 para. 18(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 18(1)**

Marginal Citations

M31 1985 c. 6.

VALID FROM 28/07/2000

[F30804F Interpretation of sections 804A to 804E.

Expressions used in sections 804A to 804E and in Chapter I of Part XII have the same meaning in those sections as in that Chapter.**]**

Textual Amendments

F30 S. 804F inserted (with effect in accordance with Sch. 30 para. 19(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 19(1)**

VALID FROM 21/07/2009

[F31804GReduction in credit: payment by reference to foreign tax

(1) This section applies if—

(a) credit for foreign tax falls to be allowed to a person ("P") under any arrangements, and

(b) a payment is made by a tax authority to P, or any person connected with P, by reference to the foreign tax.

(2) The amount of that credit is to be reduced by an amount equal to that payment.

(3) Section 839 applies for the purposes of determining whether or not a person is connected with P.**]**

Textual Amendments

F31 S. 804G inserted (with effect in accordance with s. 59(13) of the amending Act) by Finance Act 2009 (c. 10), **s. 59(2)**

805 Elections against credit.

[M32]Credit shall not be allowed under any arrangements against the United Kingdom taxes chargeable in respect of any income or chargeable gains of any person if he elects that credit shall not be allowed in respect of that income or those gains

Modifications etc. (not altering text)

C28 *See* s.732(4)—*dealers in securities.*

C29 Ss. 805, 806 applied (31.12.2006 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **regs. 1(1)**, 4

Marginal Citations

M32 Source—1970 s.511; 1972 s.100(1)

806 Time limit for claims etc.

[M33](1) Subject to subsection (2) below and section 804(7), any claim for an allowance under any arrangements by way of credit for foreign tax in respect of any income or chargeable gain shall be made not later than six years from the end of the chargeable period for which the income or the gain falls to be charged to income tax or corporation tax, or would fall to be so charged if any income tax or corporation tax were chargeable in respect of the income or gain.

(2) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the laws of any other territory, nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what credit falls to be given.

Modifications etc. (not altering text)

C30 *See* s.448—*overseas life assurance companies.*

Marginal Citations

M33 Source—1970 s.512

VALID FROM 28/07/2000

I[F32] Foreign dividends: onshore pooling and utilisation of eligible unrelieved foreign tax

Textual Amendments

F32 Ss. 806A-806H, 806J and cross-heading inserted (with effect in accordance with Sch. 30 para. 21(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 21(1)**

806A Eligible unrelieved foreign tax on dividends: introductory.

(1) This section applies where, in any accounting period of a company resident in the United Kingdom, an amount of eligible unrelieved foreign tax arises in respect of a dividend falling within subsection (2) below paid to the company.

(2) The dividends that fall within this subsection are any dividends chargeable under Case V of Schedule D, other than—

(a) any dividend which is trading income for the purposes of section 393;

(b) any dividend which, in the circumstances described in paragraphs (a) and (b) of subsection (8) of section 393, would by virtue of that subsection fall to be treated as trading income for the purposes of subsection (1) of that section;

(c) in a case where section 801A applies, the dividend mentioned in subsection (1)(b) of that section;

(d) in a case where section 803 applies, the dividend mentioned in subsection (1)(b) of that section;

(e) any dividend the amount of which is, under section 811, treated as reduced.

(3) For the purposes of this section—

(a) the cases where an amount of eligible unrelieved foreign tax arises in respect of a dividend falling within subsection (2) above are the cases set out in subsections (4) and (5) below; and

(b) the amounts of eligible unrelieved foreign tax which arise in any such case are those determined in accordance with section 806B.

(4) Case A is where—

(a) the amount of the credit for foreign tax which under any arrangements would, apart from section 797, be allowable against corporation tax in respect of the dividend,

exceeds

(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of the dividend.

(5) Case B is where the amount of tax which, by virtue of any provision of any arrangements, falls to be taken into account as mentioned in section 799(1) in the case of the dividend (whether or not by virtue of section 801(2) or (3)) is less than it would be apart from the mixer cap.

(6) In determining whether the circumstances are as set out in subsection (4) or (5) above, sections 806C and 806D shall be disregarded.

806B The amounts that are eligible unrelieved foreign tax.

(1) This section has effect for determining the amounts of eligible unrelieved foreign tax which arise in the cases set out in section 806A(4) and (5).

(2) In Case A, the difference between—

(a) the amount of the credit allowed as mentioned in section 806A(4)(b), and

(b) the greater amount of the credit that would have been so allowed if, for the purposes of subsection (2) of section 797, the rate of corporation tax payable as mentioned in that subsection were the upper percentage,

shall be an amount of eligible unrelieved foreign tax.

(3) In Case B, where the mixer cap restricts the amount of tax to be taken into account as mentioned in section 799(1) in the case of the Case V dividend, the difference, in the case of that dividend, between—

(a) the amount of tax to be taken into account as there mentioned, and

(b) the greater amount of tax that would have been taken into account as there mentioned, had M in the formula in section 799(1A) in its application in the case of that dividend (but not any lower level dividend) been the upper percentage,

shall be an amount of eligible unrelieved foreign tax.

(4) In Case B, where the mixer cap—

(a) restricts the amount of underlying tax that is treated as mentioned in subsection (2) or (3) of section 801 in the case of any dividend received as mentioned in that subsection, but

(b) does not restrict the relevant tax in the case of any higher level dividend,

subsection (5) below shall apply.

(5) Where this subsection applies, an amount equal to the appropriate portion of the difference, in the case of the dividend mentioned in subsection (4)(a) above, between—

(a) the amount of underlying tax treated as mentioned in section 801(2) or (3), as the case may be, and

(b) the greater amount of underlying tax that would have been so treated, had M in the formula in section 799(1A) in its application in the case of that dividend (but not any higher or lower level dividend) been the upper percentage,

shall be an amount of eligible unrelieved foreign tax.

(6) For the purposes of subsection (5) above, the "appropriate portion" of the difference there mentioned in the case of any dividend is found by multiplying the amount of that difference by the product of the reducing fractions for each of the higher level dividends.

(7) For the purposes of subsection (6) above, the "reducing fraction" for any dividend is the fraction—

(a) whose numerator is the amount of the dividend; and

(b) whose denominator is the amount of the relevant profits (within the meaning of section 799(1)) out of which the dividend is paid.

(8) Any reference in this section to any tax being restricted by the mixer cap in the case of any dividend is a reference to that tax being so restricted otherwise than by virtue only of the application of the mixer cap in the case of one or more lower level dividends.

(9) For the purpose of determining the amount described in subsection (2)(b), (3)(b) or (5)(b) above, sections 806C and 806D shall be disregarded.

(10) In this section—

"the Case V dividend" means the dividend mentioned in section 806A(1);

"higher level dividend", in relation to another dividend, means any dividend—

(a) by which that other dividend is to any extent represented; and

(b) which either is the Case V dividend or is to any extent represented by the Case V dividend;

"lower level dividend", in relation to another dividend, means any dividend which—

(a) is received as mentioned in section 801(2) or (3); and

(b) is to any extent represented by that other dividend;

"the relevant tax" means—

(a) in the case of the Case V dividend, the foreign tax to be taken into account as mentioned in section 799(1); and

(b) in the case of any other dividend, the amount of underlying tax to be treated as mentioned in section 801(2) or (3) in the case of the dividend.

806C Onshore pooling.

(1) In this section "qualifying foreign dividend" means any dividend which falls within section 806A(2), other than—

(a) an ADP dividend paid by a controlled foreign company;

(b) so much of any dividend paid by any company as represents an ADP dividend paid by another company which is a controlled foreign company;

(c) a dividend in respect of which an amount of eligible unrelieved foreign tax arises.

(2) For the purposes of this section—

(a) a "related qualifying foreign dividend" is any qualifying foreign dividend paid to a company resident in the United Kingdom by a company which, at the time of payment of the dividend, is related to that company;

(b) an "unrelated qualifying foreign dividend" is any qualifying foreign dividend which is not a related qualifying foreign dividend.

(3) For the purposes of giving credit relief under this Part to a company resident in the United Kingdom—

(a) the related qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

(b) the unrelated qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

(c) the underlying tax in relation to the related qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

(d) so much of the foreign tax paid in respect of the qualifying foreign dividends that arise to the company in an accounting period as is not underlying tax shall be aggregated.

(4) Credit relief under this Part shall be given as if—

(a) the related qualifying foreign dividends aggregated under paragraph (a) of subsection (3) above in the case of any accounting period instead together constituted a single related qualifying foreign dividend arising in that accounting period ("the single related dividend" arising in that accounting period);

(b) the unrelated qualifying foreign dividends aggregated under paragraph (b) of that subsection in the case of any accounting period instead together constituted a single unrelated qualifying foreign dividend arising in that accounting period ("the single unrelated dividend" arising in that accounting period);

(c) the underlying tax aggregated under paragraph (c) of that subsection for any accounting period were instead underlying tax in relation to the single related dividend arising in that accounting period (the "aggregated underlying tax" in respect of the single related dividend);

(d) the tax aggregated under paragraph (d) of that subsection for any accounting period were instead foreign tax (other than underlying tax) paid in respect of, and computed by reference to,—

(i) the single related dividend arising in that accounting period,

(ii) the single unrelated dividend so arising, or

(iii) partly the one dividend and partly the other,

(that aggregated tax being referred to as the "aggregated withholding tax").

(5) For the purposes of this section, a dividend paid by a controlled foreign company is an "ADP dividend" if it is a dividend by virtue of which (whether in whole or in part and whether taken alone or with one or more other dividends) no apportionment under section 747(3) falls to be made as regards an accounting period of the controlled foreign company in a case where such an apportionment would fall to be made apart from section 748(1)(a).

806D Utilisation of eligible unrelieved foreign tax.

(1) For the purposes of this section, where—

(a) any eligible unrelieved foreign tax arises in an accounting period of a company, and

(b) the dividend in relation to which it arises is paid by a company which, at the time of payment of the dividend, is related to that company,

that tax is "eligible underlying tax" to the extent that it consists of or represents underlying tax.

(2) To the extent that any eligible unrelieved foreign tax is not eligible underlying tax it is for the purposes of this section "eligible withholding tax".

(3) For the purposes of giving credit relief under this Part to a company resident in the United Kingdom—

(a) the amounts of eligible underlying tax that arise in an accounting period of the company shall be aggregated (that aggregate being referred to as the "relievable underlying tax" arising in that accounting period); and

(b) the amounts of eligible withholding tax that arise in an accounting period of the company shall be aggregated (that aggregate being referred to as the "relievable withholding tax" arising in that accounting period).

(4) The relievable underlying tax arising in an accounting period of the company shall be treated for the purposes of allowing credit relief under this Part as if it were—

(a) underlying tax in relation to the single related dividend that arises in the same accounting period,

(b) relievable underlying tax arising in the next accounting period (whether or not any related qualifying foreign dividend in fact arises to the company in that accounting period), or

(c) underlying tax in relation to the single related dividend that arises in such one or more preceding accounting periods as result from applying the rules in section 806E,

or partly in one of those ways and partly in each or either of the others.

(5) The relievable withholding tax arising in an accounting period of the company shall be treated for the purposes of allowing credit relief under this Part as if it were—

(a) foreign tax (other than underlying tax) paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend that arises in the same accounting period,

(b) relievable withholding tax arising in the next accounting period (whether or not any qualifying foreign dividend in fact arises to the company in that accounting period), or

(c) foreign tax (other than underlying tax) paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend that arises in such one or more preceding accounting periods as result from applying the rules in section 806E,

or partly in one of those ways and partly in any one or more of the others.

(6) The amount of relievable underlying tax or relievable withholding tax arising in an accounting period that is treated—

(a) under subsection (4)(a) or (c) above as underlying tax in relation to the single related dividend arising in the same or any earlier accounting period, or

(b) under subsection (5)(a) or (c) above as foreign tax paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend arising in the same or any earlier accounting period,

must not be such as would cause an amount of eligible unrelieved foreign tax to arise in respect of that dividend.

806E Rules for carry back of relievable tax under section 806D.

(1) Where any relievable tax is to be treated as mentioned in section 806D(4)(c) or (5)(c), the rules for determining the accounting periods in question (and the amount of the relievable tax to be so treated in relation to each of them) are those set out in the following provisions of this section.

(2) Rule 1 is that the accounting periods in question must be accounting periods beginning not more than three years before the accounting period in which the relievable tax arises.

(3) Rule 2 is that the relievable tax must be so treated that—

(a) credit for, or for any remaining balance of, the relievable tax is allowed against corporation tax in respect of the single dividend arising in a later one of the accounting periods beginning as mentioned in rule 1 above,

before

(b) credit for any of the relievable tax is allowed against corporation tax in respect of the single dividend arising in any earlier such accounting period.

(4) Rule 3 is that the relievable tax must be so treated that, before allowing credit for any of the relievable tax against corporation tax in respect of the single dividend arising in any accounting period, credit for foreign tax is allowed—

(a) first for the aggregated foreign tax in respect of the single dividend arising in that accounting period, so far as not consisting of relievable tax arising in another accounting period; and

(b) then for relievable tax arising in any accounting period before that in which the relievable tax in question arises.

(5) The above rules are subject to sections 806D(6) and 806F.

(6) In this section—

"aggregated foreign tax" means aggregated underlying tax or aggregated withholding tax;

"relievable tax" means relievable underlying tax or relievable withholding tax;

"the single dividend" means—

(a) in relation to relievable underlying tax, the single related dividend; and

(b) in relation to relievable withholding tax, the single related dividend or the single unrelated dividend.

806F Credit to be given for underlying tax before other foreign tax etc.

(1) For the purposes of this Part, credit in accordance with any arrangements shall, in the case of any dividend, be given so far as possible—

(a) for underlying tax (where allowable) before foreign tax other than underlying tax;

(b) for foreign tax other than underlying tax before amounts treated as underlying tax; and

(c) for amounts treated as underlying tax (where allowable) before amounts treated as foreign tax other than underlying tax.

(2) Accordingly, where the amount of foreign tax to be brought into account for the purposes of allowing credit relief under this Part is subject to any limitation or restriction, the limitation or restriction shall be taken to have the effect of excluding foreign tax other than underlying tax before excluding underlying tax.

806G Claims for the purposes of section 806D(4) or (5).

(1) The relievable underlying tax or relievable withholding tax arising in any accounting period shall only be treated as mentioned in subsection (4) or (5) of section 806D on a claim.

(2) Any such claim must specify the amount (if any) of that tax—

(a) which is to be treated as mentioned in paragraph (a) of the subsection in question;

(b) which is to be treated as mentioned in paragraph (b) of that subsection; and

(c) which is to be treated as mentioned in paragraph (c) of that subsection.

(3) A claim under subsection (1) above may only be made before the expiration of the period of—

(a) six years after the end of the accounting period mentioned in that subsection; or

(b) if later, one year after the end of the accounting period in which the foreign tax in question is paid.

806H Surrender of relievable tax by one company in a group to another.

(1) The Board may by regulations make provision for, or in connection with, allowing a company which is a member of a group to surrender all or any part of the amount of the relievable tax arising to it in an accounting period to another company which is a member of that group at the time, or throughout the period, prescribed by the regulations.

(2) The provision that may be made under subsection (1) above includes provision—

(a) prescribing the conditions which must be satisfied if a surrender is to be made;

(b) determining the amount of relievable tax which may be surrendered in any accounting period;

(c) prescribing the conditions which must be satisfied if a claim to surrender is to be made;

(d) prescribing the consequences for tax purposes of a surrender having been made;

(e) allowing a claim to be withdrawn and prescribing the effect of such a withdrawal.

(3) Regulations under subsection (1) above—

(a) may make different provision for different cases; and

(b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.

(4) For the purposes of subsection (1) above a company is a member of a group if the conditions prescribed for that purpose in the regulations are satisfied.

806J Interpretation of foreign dividend provisions of this Chapter.

(1) This section has effect for the interpretation of the foreign dividend provisions of this Chapter.

(2) In this section, "the foreign dividend provisions of this Chapter" means sections 806A to 806H and this section.

(3) For the purposes of the foreign dividend provisions of this Chapter, where—

(a) one company pays a dividend ("dividend A") to another company, and

(b) that other company, or a company which is related to it, pays a dividend ("dividend B") to another company,

dividend B represents dividend A, and dividend A is represented by dividend B, to the extent that dividend B is paid out of profits which are derived, directly or indirectly, from the whole or part of dividend A.

(4) Where—

(a) one company is related to another, and

(b) that other is related to a third company,

the first company shall be taken for the purposes of paragraph (b) of subsection (3) above to be related to the third, and so on where there is a chain of companies, each of which is related to the next.

(5) In any case where—

(a) a company resident outside the United Kingdom pays a dividend to a company resident in the United Kingdom, and

(b) the circumstances are such that subsection (6)(b) of section 790 has effect in relation to that dividend,

the foreign dividend provisions of this Chapter shall have effect as if the company resident outside the United Kingdom were related to the company resident in the United Kingdom (and subsection (10) of that section shall have effect accordingly).

(6) Subsection (5) of section 801 (related companies) shall apply for the purposes of the foreign dividend provisions of this Chapter as it applies for the purposes of that section.

(7) In the foreign dividend provisions of this Chapter—

"aggregated underlying tax" shall be construed in accordance with section 806C(4)(c);

"aggregated withholding tax" shall be construed in accordance with section 806C(4)(d);

"controlled foreign company" has the same meaning as in Chapter IV of Part XVII;

"eligible unrelieved foreign tax" shall be construed in accordance with sections 806A and 806B;

"the mixer cap" means section 799(1)(b);

"qualifying foreign dividend" has the meaning given by section 806C(1);

"related qualifying foreign dividend" has the meaning given by section 806C(2)(a);

"relievable tax" has the meaning given by section 806E(6);

"relievable underlying tax" shall be construed in accordance with 806D(3)(a);

"relievable withholding tax" shall be construed in accordance with 806D(3)(b);

"single related dividend" shall be construed in accordance with section 806C(4)(a);

"single unrelated dividend" shall be construed in accordance with section 806C(4)(b);

"the upper percentage" is 45 per cent.**]**

VALID FROM 28/07/2000

[F33 Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere

Textual Amendments

F33 S. 806K and cross-heading inserted (with effect in accordance with Sch. 30 para. 22(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 22(1)**

806K Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere.

(1) Sections 806A to 806J shall apply in relation to an amount of eligible unrelieved foreign tax arising in a chargeable period in respect of any of the income of a branch or agency in the United Kingdom of a person resident outside the United Kingdom as they apply in relation to eligible unrelieved foreign tax arising in an accounting period of a company resident in the United Kingdom in respect of any of the company's income, but with the modifications specified in subsection (2) below.

(2) Those modifications are—

(a) take any reference to an accounting period as a reference to a chargeable period;

(b) take any reference to corporation tax as including a reference to income tax;

(c) take the reference in section 806A(4)(a) to section 797 as a reference to sections 796 and 797;

(d) in relation to income tax, for subsection (2) of section 806B substitute the subsection (2) set out in subsection (3) below.

(3) That subsection is—

(") In Case A, the difference between—

(a) the amount of the credit allowed as mentioned in section 806A(4)(b), and

(b) the greater amount of credit that would have been so allowed if, for the purposes of section 796, the amount of income tax borne on the dividend as computed under that section were charged at a rate equal to the upper percentage,

shall be an amount of eligible unrelieved foreign tax. ".]

Modifications etc. (not altering text)

C31 S. 806K(1) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

VALID FROM 28/07/2000

[F34 Unrelieved foreign tax: profits of overseas branch or agency

Textual Amendments

F34 Ss. 806L, 806M and cross-heading inserted (with effect in accordance with Sch. 30 para. 23(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 23(1)**

806L Carry forward or carry back of unrelieved foreign tax.

(1) This section applies where, in any accounting period of a company resident in the United Kingdom, an amount of unrelieved foreign tax arises in respect of any of the company's qualifying income from an overseas branch or agency of the company.

(2) The amount of the unrelieved foreign tax so arising shall be treated for the purposes of allowing credit relief under this Part as if it were foreign tax paid in respect of, and computed by reference to, the company's qualifying income from the same overseas branch or agency—

(a) in the next accounting period (whether or not the company in fact has any such income from that source in that accounting period), or

(b) in such one or more preceding accounting periods, beginning not more than three years before the accounting period in which the unrelieved foreign tax arises, as result from applying the rules in subsection (3) below,

or partly in the one way and partly in the other.

(3) Where any unrelieved foreign tax is to be treated as mentioned in paragraph (b) of subsection (2) above, the rules for determining the accounting periods in question (and the amount of the unrelieved foreign tax to be so treated in relation to each of them) are that the unrelieved foreign tax must be so treated under that paragraph—

(1) that—

(a) credit for, or for any remaining balance of, the unrelieved foreign tax is allowed against corporation tax in respect of income of a later one of the accounting periods beginning as mentioned in that paragraph,

before

(b) credit for any of the unrelieved foreign tax is allowed against corporation tax in respect of income of any earlier such period;

(2) that, before allowing credit for any of the unrelieved foreign tax against corporation tax in respect of income of any accounting period, credit for foreign tax is allowed—

(a) first for foreign tax in respect of the income of that accounting period, other than unrelieved foreign tax arising in another accounting period; and

(b) then for unrelieved foreign tax arising in any accounting period before that in which the unrelieved foreign tax in question arises.

(4) For the purposes of this section, the cases where an amount of unrelieved foreign tax arises in respect of any of a company's qualifying income from an overseas branch or agency in an accounting period are those cases where—

(a) the amount of the credit for foreign tax which under any arrangements would, apart from section 797, be allowable against corporation tax in respect of that income,

exceeds

(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of that income;

and in any such case that excess is the amount of the unrelieved foreign tax in respect of that income.

(5) For the purposes of this section, a company's qualifying income from an overseas branch or agency is the profits of the overseas branch or agency which are—

(a) chargeable under Case I of Schedule D; or

(b) included in the profits of life reinsurance business or overseas life assurance business chargeable under Case VI of Schedule D by virtue of section 439B or 441.

(6) Where (whether by virtue of this subsection or otherwise) an amount of unrelieved foreign tax arising in an accounting period falls to be treated under subsection (2) above for the purposes of allowing credit relief under this Part as foreign tax paid in respect of, and computed by reference to, qualifying income of an earlier accounting period, it shall not be so treated for the purpose of any further application of this section.

(7) In this section "overseas branch or agency", in relation to a company, means a branch or agency through which the company carries on a trade in a territory outside the United Kingdom.

806M Provisions supplemental to section 806L.

(1) This section has effect for the purposes of section 806L and shall be construed as one with that section.

(2) If, in any accounting period, a company ceases to have a particular overseas branch or agency, the amount of any unrelieved foreign tax which arises in that accounting period in respect of the company's income from that overseas branch or agency shall, to the extent that it is not treated as mentioned in section 806L(2)(b), be reduced to nil (so that no amount arises which falls to be treated as mentioned in section 806L(2)(a)).

(3) If a company—

(a) at any time ceases to have a particular overseas branch or agency in a particular territory ("the old branch or agency"), but

(b) subsequently again has an overseas branch or agency in that territory ("the new branch or agency"),

the old branch or agency and the new branch or agency shall be regarded as different overseas branches or agencies.

(4) If, under the law of a territory outside the United Kingdom, tax is charged in the case of a company resident in the United Kingdom in respect of the profits of two or more of its overseas branches or agencies in that territory, taken together, then, for the purposes of—

(a) section 806L, and

(b) subsection (3) above,

those overseas branches or agencies shall be treated as if they together constituted a single overseas branch or agency of the company.

(5) Unrelieved foreign tax arising in respect of qualifying income from a particular overseas branch or agency in any accounting period shall only be treated as mentioned in subsection (2) of section 806L on a claim.

(6) Any such claim must specify the amount (if any) of the unrelieved foreign tax—

(a) which is to be treated as mentioned in paragraph (a) of that subsection; and

(b) which is to be treated as mentioned in paragraph (b) of that subsection.

(7) A claim under subsection (5) above may only be made before the expiration of the period of—

(a) six years after the end of the accounting period mentioned in that subsection, or

(b) if later, one year after the end of the accounting period in which the foreign tax in question is paid.**]**

CHAPTER III

MISCELLANEOUS PROVISIONS

807 Sale of securities with or without accrued interest.

M34(1) In any case where—

(a) a person is treated under section 714(2) as receiving annual profits or gains on the day an interest period ends; and

(b) assuming that, in the chargeable period in which the day falls, he were to become entitled to any interest on the securities concerned, he would be liable in respect of the interest to tax chargeable under Case IV or V of Schedule D; and

(c) he is liable under the law of a territory outside the United Kingdom to tax in respect of interest payable on the securities at the end of the interest period or he would be so liable if he were entitled to that interest,

credit of an amount equal to the relevant proportion of the profits or gains shall be allowed against any United Kingdom income tax or corporation tax computed by reference to the profits or gains, and shall be treated as if it were allowed under section 790(4).

In this subsection the relevant proportion is the rate of tax to which the person is or would be liable as mentioned in paragraph (c) above.

(2) In any case where—

(a) a person is entitled to credit against United Kingdom tax under section 790(4) or any corresponding provision of arrangements under section 788; and

(b) the tax is computed by reference to income consisting of interest which falls due on securities at the end of an interest period and which is treated as reduced by virtue of section 714(5);

then the amount of that credit shall be a proportion of the amount it would be apart from this subsection, and the proportion is to be found by applying the formula—

$$\frac{I-R}{I}$$

where—

I is the amount of the interest; and

R is the amount by which it is treated as reduced.

(3) [M35]Where the person entitled to the credit is an individual, subsection (2) above does not apply unless the interest arises from securities to which the person either became or ceased to be entitled during the interest period.

(4) Where section 811(1) applies to any income and, if credit were allowable in respect of it the credit would be reduced by virtue of subsection (2) above, section 811(1) shall have effect in relation to the income as if the reference to any sum paid in respect of tax on it were a reference to the amount which would be the amount of the credit if it were allowable and subsection (2) above applied.

(5) Sections 710 and 711 shall apply for the interpretation of this section.

Marginal Citations

M34 Source—1985 Sch.23 37

M35 Source—1988 Sch.23 38(1)-(3)

VALID FROM 29/04/1996

[F35 807A Disposals and acquisitions of company loan relationships with or without interest.

(1) This Part shall have effect for the purposes of corporation tax in relation to any company as if tax falling within subsection (2) below were to be disregarded.

(2) Tax falls within this subsection in relation to a company to the extent that it is—

(a) tax under the law of a territory outside the United Kingdom; and

(b) is attributable, on a just and reasonable apportionment, to interest accruing under a loan relationship at a time when the company is not a party to the relationship.

(3) Subject to subsections (1), (4) and (5) of this section, where—

(a) any non-trading credit relating to an amount of interest under a loan relationship is brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in the case of any company,

(b) that amount falls, as a result of any related transaction, to be paid to a person other than the company, and

(c) had the company been entitled, at the time of that transaction, to receive a payment of an amount of interest equal to the amount of interest to which

the non-trading credit relates, the company would have been liable in respect of the amount of interest received to an amount of tax under the law of a territory outside the United Kingdom,

credit for that amount of tax shall be allowable under section 790(4) as if that amount of tax were an amount of tax paid under the law of that territory in respect of the amount of interest to which the non-trading credit relates.

(4) Subsection (3) above does not apply in the case of a credit brought into account in accordance with paragraph 1(2) of Schedule 11 to the Finance Act 1996 (the I minus E basis).

(5) The Treasury may by regulations provide for subsection (3) above to apply—

(a) in the case of trading credits, as well as in the case of non-trading credits;

(b) in the case of any credit ("an insurance credit") in the case of which, by virtue of subsection (4) above, it would not otherwise apply.

(6) Regulations under subsection (5) above may—

(a) provide for subsection (3) above to apply in the case of a trading credit or an insurance credit only if the circumstances are such as may be described in the regulations;

(b) provide for subsection (3) above to apply, in cases where it applies by virtue of any such regulations, subject to such exceptions, adaptations or other modifications as may be specified in the regulations;

(c) make different provision for different cases; and

(d) contain such incidental, supplemental, consequential and transitional provision as the Treasury think fit.

(7) In this section—

"related transaction" has the same meaning as in section 84 of the Finance Act 1996; and

"trading credit" means any credit falling to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in accordance with section 82(2) of that Act.**]**

Textual Amendments

F35 S. 807A inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 46** (with Sch. 15)

808 Restriction on deduction of interest or dividends from trading income.

M36In the case of a person not resident in the United Kingdom who carries on in the United Kingdom **[**F36a business**]**, receipts of interest **[**F37, dividend or royalties**]** which have been treated as tax-exempt under arrangements having effect by virtue of section 788 are not to be excluded from trading income or profits of the business so as to give rise to losses to be set off (under section 393 **[**F38393A(1)**]** or 436) against income or profits.

F39

. . . . . .

Textual Amendments

F36 Words in s. 808 substituted (with effect in accordance with s. 140(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 140(1)(a)**

F37 Words in s. 808 substituted (with effect in accordance with s. 140(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 140(1)(b)**

F38 Words in s. 808 inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para.21**

F39 Words in s. 808 repealed (with effect in accordance with s. 140(2) of the repealing Act) by Finance Act 1994 (c. 9), s. 140(1)(c), **Sch. 26 Pt. 5(18)**, Note

Marginal Citations

M36 Source—1976 s.50(1)

[F40 808A Interest: special relationship.

(1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—

(a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and

(b) make provision (the special relationship provision) that where owing to a special relationship the amount of the interest paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.

(2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the loan would have been made at all in the absence of the relationship,

(b) the amount which the loan would have been in the absence of the relationship, and

(c) the rate of interest and other terms which would have been agreed in the absence of the relationship.

(3) The special relationship provision shall be construed as requiring the taxpayer to show that there is no special relationship or (as the case may be) to show the amount of interest which would have been paid in the absence of the special relationship.

(4) In a case where—

(a) a company makes a loan to another company with which it has a special relationship, and

(b) it is not part of the first company's business to make loans generally,

the fact that it is not part of the first company's business to make loans generally shall be disregarded in construing subsection (2) above.

(5) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the debt on which the interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).]

Textual Amendments

F40 S. 808A inserted (16.7.1992 with application in relation to interest paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), **s.52**

Modifications etc. (not altering text)

C32 S. 808A(2)-(4) applied (with effect in accordance with s. 97(5)(6) of the affecting Act) by Finance Act 2004 (c. 12), **s. 103** (with s. 106)

C33 S. 808A(2)-(4) applied (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 764** (with Sch. 2)

VALID FROM 28/07/2000

[F41 808B Royalties: special relationship.

(1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—

(a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and

(b) make provision (the special relationship provision) that where owing to a special relationship the amount of the royalties paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.

(2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the relationship,

(b) the rate or amounts of royalties and other terms which would have been agreed in the absence of the relationship, and

(c) where subsection (3) below applies, the factors specified in subsection (4) below.

(3) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—

(a) the person who is liable to pay the royalties,

(b) a person who is, or has at any time been, an associate of the person who is liable to pay the royalties,

(c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by the person liable to pay those royalties, or

(d) a person who is, or has at any time been, an associate of a person who has at any time carried on such a business as is mentioned in paragraph (c) above.

(4) The factors mentioned in subsection (2)(c) above are—

(a) the amounts which were paid under the transaction, or under each of the transactions in the series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,

(b) the amounts which would have been so paid in the absence of a special relationship, and

(c) the question whether the transaction or series of transactions would have taken place in the absence of such a relationship.

(5) The special relationship provision shall be construed as requiring the taxpayer to show—

(a) the absence of any special relationship, or

(b) the rate or amount of royalties that would have been payable in the absence of the relationship,

as the case may be.

(6) The requirement on the taxpayer to show in accordance with subsection (5)(a) above the absence of any special relationship includes a requirement—

(a) to show that no person of any of the descriptions in paragraphs (a) to (d) of subsection (3) above has previously been the beneficial owner of the asset in respect of which the royalties are paid, or of any asset which that asset represents or from which it is derived, or

(b) to show the matters specified in subsection (7) below,

as the case may be.

(7) Those matters are—

(a) that the transaction or series of transactions mentioned in subsection (4)(a) above would have taken place in the absence of a special relationship, and

(b) the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of such a relationship.

(8) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).

(9) For the purposes of this section one person ("person A") is an associate of another person ("person B") at a given time if—

(a) person A was, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person B at that time, or

(b) the same person was or same persons were, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person A and person B at that time.**]**

Textual Amendments

F41 S. 808B inserted (with effect in accordance with Sch. 30 para. 25(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 25(1)**

Modifications etc. (not altering text)

C34 S. 808B(2)-(7)(9) applied (with effect in accordance with s. 97(5)(6) of the affecting Act) by Finance Act 2004 (c. 12), **s. 103** (with s. 106)

C35 S. 808B(2)-(7)(9) applied (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 764** (with Sch. 2)

809 Relief in respect of discretionary trusts.

[M37](1) In any case where—

(a) a payment made by trustees falls to be treated as a net amount in accordance with section 687(2) and the income arising under the trust includes any taxed overseas income, and

(b) the trustees certify that—

(i) the income out of which the payment was made was or included taxed overseas income of an amount and from a source stated in the certificate, and

(ii) that amount arose to them not earlier than six years before the end of the year of assessment in which the payment was made;

then the person to whom the payment was made may claim that the payment, up to the amount so certified, shall be treated for the purposes of this Part as income received by him from that source and so received in the year in which the payment was made.

(2) In subsection (1) above "taxed overseas income", in relation to any trust, means income in respect of which the trustees are entitled to credit for overseas tax under this Part.

Marginal Citations
M37 Source—1973 s.18

810 Postponement of capital allowances to secure double taxation relief.

[M38](1) Where—

(a) a person chargeable to tax under Schedule D in respect of a trade is liable to overseas tax in respect of any income arising from the trade, being overseas tax for which relief may be given by way of credit, repayment or set off under the preceding provisions of this Part, and

(b) the conditions specified in subsection (2) below are satisfied,

he may, in claiming the relief in respect of that income, claim a postponement under this section of the relevant capital allowances operating to reduce that income for the purposes of tax for any chargeable period.

(2) The conditions are—

(a) that the law under which the overseas tax is chargeable provides for deductions or allowances to be given corresponding to capital allowances, but on a different basis such that they operate to reduce the income in question (if at all) to a less extent than the capital allowances to which the claim relates, but are calculated to operate to a greater extent than the corresponding capital allowances to reduce income arising subsequently; and

(b) that the relief falling to be so given in respect of the income in question is less than it would be if the capital allowances to which the claim relates operated

to reduce the income to the same extent only as the deductions or allowances so provided for.

(3) Where a person claims a postponement under this section of capital allowances for any chargeable period, then—

(a) for the purposes of making the assessment for that period, the amount of those allowances shall be reduced by such amount as may be necessary to secure that they operate to reduce the income only to the extent mentioned in subsection (2)(b) above (or such less amount as the claimant may require); and

(b) for the purpose of making the assessment for the following period that amount shall be added to the amount of the allowances for that period, and shall be deemed to be part of those allowances or, if there are no such allowances for that period, shall be deemed to be the allowances for that period.

(4) For the purposes of any claim under this section—

(a) there shall be taken into account such only of the relevant capital allowances, and the deductions or allowances operating to reduce the income in question for purposes of the overseas tax, as are calculated to give relief in respect of the same expenditure or the same assets; and

(b) no account shall be taken of expenditure . . . [F42] incurred on or after 27th October 1970.

(5) In this section "overseas tax" means tax chargeable under the laws of any territory outside the United Kingdom, and "relevant capital allowances", in relation to any trade, means capital allowances falling to be made in taxing the trade.

(6) This section applies (with any necessary adaptations) in relation to a profession, employment, vocation or office,*and in relation to the occupation of woodlands the profits or gains of which are assessable under Schedule D*[F43], as it applies in relation to a trade.

Textual Amendments

F42 *Words repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F43 *Words repealed by* 1988(F) s.148*and* Sch.14 Part V*from* 6*April* 1993.

Marginal Citations

M38 Source—1970 s.515; 1971 s.54(1); 1982 s.78

811 Deduction for foreign tax where no credit allowable.

[M39](1) For the purposes of the Tax Acts, the amount of any income arising in any place outside the United Kingdom shall, subject to subsection (2) below, be treated as reduced by any sum which has been paid in respect of tax on that income in the place where the income has arisen (that is to say, tax payable under the law of a territory outside the United Kingdom).

(2) Subsection (1) above—

(a) shall not apply to income the tax on which is to be computed by reference to the amount of income received in the United Kingdom; and

(b) shall not affect section 278(3); [F44]. . .

[F45](c) . . . . . .

and this section has effect subject to section 795(2).

Textual Amendments

F44 S. 811(2): the word "and" immediately preceding s. 811(2)(c) repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(3)(4), 213, **Sch. 23 Pt. III(9)**

F45 S. 811(2)(c) repealed (with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(g)(3)(4), 213, **Sch. 23 Pt. III(9)**

Marginal Citations

M39 Source—1970 s.516; 1973 s.40(1); 1987 Sch.15 2(19)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states.

M40(1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under **[**F46section 2(1) of TIOPA 2010**]** to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under **[**F47section 397(2)(a) of ITTOIA 2005**]** to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made **[**F48nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where**]** the credit exceeds that income tax, to have the excess paid to it.

(2) M41In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom **[**F49in relation to**]** which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) M42A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**F507½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim

under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) **M43**Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

[F51(c) whether a person is connected with another is determined in accordance with **[**F52section 1122 of CTA 2010**]**;**]**

[F53(d) sections 449 to 451 of CTA 2010 apply but with the substitution in section 449 of "6 years" for "12 months".**]**

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) **M44**The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**F54either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.";

or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M45]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M46]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F46 Words in s. 812(1)(b) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 30** (with Sch. 9)

F47 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(a)** (with Sch. 2)

F48 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(b)** (with Sch. 2)

F49 Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F50 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F51 S. 812(5)(c) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 201** (with Sch. 2)

F52 Words in s. 812(5)(c) substituted (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **Sch. 1 para. 116(a)** (with Sch. 2)

F53 S. 812(5)(d) substituted (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **Sch. 1 para. 116(b)** (with Sch. 2)

F54 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

Marginal Citations

M40 Source—1985 s.54(1),(3)

M41 Source—1985 s.54(6) Sch.13 5

M42 Source—1985 s.54(4),(5)

M43 Source—1985 s.54(6) Sch.13 5.

M44 Source—1985 s.54(7)(b), Sch.13 5(1)

M45 Source—1985 s.54(7)(a)

M46 Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

[M40](1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under section 231(3) to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made or, where the credit exceeds that income tax, to have the excess paid to it.

(2) [M41]In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom with the government of which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) [M42]A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) 7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) [M43]Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

(c) section 839 applies;

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M44]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted either the following provisions—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is subject to tax in such a state for any period ending after the relevant date for which that state charges tax.

(4) For the purposes of subsection (3) above a company shall be regarded as subject to tax in a unitary state if it is liable there to a tax charged on its income or profits by whatever name called and shall be treated as so charged unless it proves otherwise to the satisfaction of the Board.";

or the following provisions—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above—

(a) a company shall be treated as having its principal place of business in a unitary state unless it proves otherwise to the satisfaction of the Board; and

(b) the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised.".

(8) [M45]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M46]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Marginal Citations

M40 Source—1985 s.54(1),(3)
M41 Source—1985 s.54(6) Sch.13 5
M42 Source—1985 s.54(4),(5)
M43 Source—1985 s.54(6) Sch.13 5.
M44 Source—1985 s.54(7)(b), Sch.13 5(1)
M45 Source—1985 s.54(7)(a)
M46 Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

M40(1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under section 231(3) to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made or, where the credit exceeds that income tax, to have the excess paid to it.

(2) M41In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom with the government of which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) M42A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**F507½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) M43Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

(c) section 839 applies;

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M44]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**[F54]either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.";

or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M45]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M46]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F50 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F54 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

Marginal Citations

M40 Source—1985 s.54(1),(3)
M41 Source—1985 s.54(6) Sch.13 5
M42 Source—1985 s.54(4),(5)
M43 Source—1985 s.54(6) Sch.13 5.
M44 Source—1985 s.54(7)(b), Sch.13 5(1)
M45 Source—1985 s.54(7)(a)
M46 Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

M40(1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under section 231(3) to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made or, where the credit exceeds that income tax, to have the excess paid to it.

(2) M41In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom **[**F49in relation to**]** which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) M42A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**F507½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose

the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) [M43]Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

(c) section 839 applies;

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M44]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**[F54]either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.";

or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M45]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M46]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F49 Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F50 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F54 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

Marginal Citations

M40 Source—1985 s.54(1),(3)

M41 Source—1985 s.54(6) Sch.13 5

M42 Source—1985 s.54(4),(5)

M43 Source—1985 s.54(6) Sch.13 5.

M44 Source—1985 s.54(7)(b), Sch.13 5(1)

M45 Source—1985 s.54(7)(a)

M46 Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

[M40](1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under **[**[F47]section 397(2)(a) of ITTOIA 2005**]** to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made **[**[F48]nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where**]** the credit exceeds that income tax, to have the excess paid to it.

(2) [M41]In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom **[**[F49]in relation to**]** which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) [M42]A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make

up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**F50 7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) M43 Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

(c) section 839 applies;

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) M44 The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**F54 either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.";

or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M45]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M46]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F47 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(a)** (with Sch. 2)

F48 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(b)** (with Sch. 2)

F49 Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F50 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F54 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

Marginal Citations

M40 Source—1985 s.54(1),(3)

M41 Source—1985 s.54(6) Sch.13 5

M42 Source—1985 s.54(4),(5)

M43 Source—1985 s.54(6) Sch.13 5.

M44 Source—1985 s.54(7)(b), Sch.13 5(1)

M45 Source—1985 s.54(7)(a)

M46 Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

[M40](1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under **[**F47section 397(2)(a) of ITTOIA 2005**]** to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made **[**F48nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where**]** the credit exceeds that income tax, to have the excess paid to it.

(2) M41In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom **[**F49in relation to**]** which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) M42A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**F507½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) M43Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

[F51(c) whether a person is connected with another is determined in accordance with section 839;**]**

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M44]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**[F54]either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.";

or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M45]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M46]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F47 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(a)** (with Sch. 2)

F48 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(b)** (with Sch. 2)

F49 Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F50 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F51 S. 812(5)(c) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 201** (with Sch. 2)

F54 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

Marginal Citations

M40 Source—1985 s.54(1),(3)
M41 Source—1985 s.54(6) Sch.13 5
M42 Source—1985 s.54(4),(5)
M43 Source—1985 s.54(6) Sch.13 5.
M44 Source—1985 s.54(7)(b), Sch.13 5(1)
M45 Source—1985 s.54(7)(a)
M46 Source—1985 s.54(8)

813 Recovery of tax credits incorrectly paid.

[M47](1) Where—

(a) section 812 applies so as to withdraw the entitlement of a company to claim to have a tax credit in respect of a qualifying distribution set against the income tax chargeable on its income and to have the excess of the credit over that income tax paid to it; and

(b) the company ("the recipient company") has either had that excess paid to it, or has received an additional amount in accordance with arrangements made under Regulation 2(1) of the [M48]Double Taxation Relief (Taxes on Income) (General) (Dividend) Regulations 1973;

the recipient company shall be liable to a fine for the violation of the provisions of section 812 equal to twice the amount of the excess or the additional amount, as the case may be.

(2) Any fine payable under subsection (1) above—

(a) shall be payable to the Board;

(b) shall be treated as having become payable at the date when the excess or additional amount was paid to the recipient company; and

(c) may be recovered in accordance with subsections (3) to (7) below;

and any such fine is referred to below as "the recoverable amount".

(3) The recoverable amount may be assessed and recovered as if it were unpaid tax and section 30 of the Management Act (recovery of overpayment of tax etc.) shall apply accordingly.

(4) Any amount which may be assessed and recovered as if it were unpaid tax by virtue of this section shall carry interest at the rate of 9 per cent. per annum from the date when it was payable in accordance with subsection (1) above until the date it is paid.

(5) It is hereby declared that this section applies to a recoverable amount which is paid without the making of an assessment (but is paid after it is due) and that, where the recoverable amount is charged by any assessment (whether or not any part of it has been paid when the assessment is made), this section applies in relation to interest running before, as well as after, the making of the assessment.

(6) Where the recoverable amount is not paid by the recipient company within six months from the date on which it became payable—

(a) the recoverable amount may at any time within six years from the date on which it became payable be assessed and recovered as if it were unpaid tax due from any person who—

(i) is or was at any time prior to the expiration of that six year period connected with the recipient company, or

(ii) would have been connected on the assumption that all the facts and circumstances relating to the recipient company at the time the excess or additional amount, as the case may be, was paid continued to apply for six years thereafter,

and section 30 of the Management Act shall apply accordingly; and

(b) . . . . . .

F55(7) Where a recoverable amount is assessed and recovered from a person connected with the recipient company in accordance with subsection (6)(a) above, that person shall be liable for the interest payable in accordance with subsection (4) above, and until the interest is so paid, subsection (6)(b) above shall apply as if the words " the interest due in accordance with subsection (4) above is paid " were substituted for the words "the recoverable amount is paid in accordance with the provisions of this section".

(8) Interest payable under this section shall be paid without any deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(9) Where under the law in force in a territory outside the United Kingdom interest is payable subject to a deduction in respect of taxation and such deduction applies to an amount of interest paid in accordance with subsection (4) above, the reference to the rate of 9 per cent. per annum in that subsection shall be deemed to be a reference to such rate of interest as after such deduction shall be equal to the rate of 9 per cent. per annum.

Textual Amendments

F55 S. 813(6)(b) repealed (with effect in accordance with Sch. 3 para. 37(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 37(2), **Sch. 27 Pt. 3(2)**, Note

Modifications etc. (not altering text)

C36 *Reproduced in* Part III Vol.5.

Marginal Citations

M47 Source—1985 Sch.13 1

M48 S.I. 1973/317.

813 Recovery of tax credits incorrectly paid. U.K.

M47(1) Where—

(a) section 812 applies so as to withdraw the entitlement of a company to claim to have a tax credit in respect of a qualifying distribution set against the income tax chargeable on its income and to have the excess of the credit over that income tax paid to it; and

(b) the company ("the recipient company") has either had that excess paid to it, or has received an additional amount in accordance with arrangements made under Regulation 2(1) of the M48Double Taxation Relief (Taxes on Income) (General) (Dividend) Regulations 1973;

the recipient company shall be liable to a fine for the violation of the provisions of section 812 equal to twice the amount of the excess or the additional amount, as the case may be.

(2) Any fine payable under subsection (1) above—

(a) shall be payable to the Board;

(b) shall be treated as having become payable at the date when the excess or additional amount was paid to the recipient company; and

(c) may be recovered in accordance with subsections (3) to (7) below;

and any such fine is referred to below as "the recoverable amount".

(3) The recoverable amount may be assessed and recovered as if it were unpaid tax and section 30 of the Management Act (recovery of overpayment of tax etc.) shall apply accordingly.

(4) Any amount which may be assessed and recovered as if it were unpaid tax by virtue of this section shall carry interest at the rate of 9 per cent. per annum from the date when it was payable in accordance with subsection (1) above until the date it is paid.

(5) It is hereby declared that this section applies to a recoverable amount which is paid without the making of an assessment (but is paid after it is due) and that, where the recoverable amount is charged by any assessment (whether or not any part of it has been paid when the assessment is made), this section applies in relation to interest running before, as well as after, the making of the assessment.

(6) Where the recoverable amount is not paid by the recipient company within six months from the date on which it became payable—

(a) the recoverable amount may at any time within six years from the date on which it became payable be assessed and recovered as if it were unpaid tax due from any person who—

(i) is or was at any time prior to the expiration of that six year period connected with the recipient company, or

(ii) would have been connected on the assumption that all the facts and circumstances relating to the recipient company at the time the excess or additional amount, as the case may be, was paid continued to apply for six years thereafter,

and section 30 of the Management Act shall apply accordingly; and

(b) as respects its accounting periods beginning with that in which the excess or additional amount referred to in subsection (1) above was paid and ending with that following that in which the recoverable amount is paid in accordance with the provisions of this section, the company which made the qualifying distribution in respect of which the recipient company received the excess or additional amount shall not be entitled—

(i) to set any advance corporation tax paid by it against its liability to corporation tax for such periods in accordance with section 239; nor

(ii) to surrender the benefit of the whole or any part of any amount of advance corporation tax to a subsidiary in accordance with section 240 in such periods.

(7) Where a recoverable amount is assessed and recovered from a person connected with the recipient company in accordance with subsection (6)(a) above, that person shall be liable for the interest payable in accordance with subsection (4) above, and until the interest is so paid, subsection (6)(b) above shall apply as if the words " the interest due in accordance with subsection (4) above is paid " were substituted for the words "the recoverable amount is paid in accordance with the provisions of this section".

(8) Interest payable under this section shall be paid without any deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(9) Where under the law in force in a territory outside the United Kingdom interest is payable subject to a deduction in respect of taxation and such deduction applies to an amount of interest paid in accordance with subsection (4) above, the reference to the rate of 9 per cent. per annum in that subsection shall be deemed to be a reference to such rate of interest as after such deduction shall be equal to the rate of 9 per cent. per annum.

Modifications etc. (not altering text)
C36 *Reproduced in* Part III Vol.5.

Marginal Citations
M47 Source—1985 Sch.13 1
M48 S.I. 1973/317.

814 Arrangements to avoid section 812.

M49(1) In any case where arrangements are made, whether before or after the coming into force of this section, as a result of which interest is paid or a discount is allowed by or through a person who is resident in the United Kingdom, or carries on business in the United Kingdom through a branch or agency, and it is reasonable to suppose that, if such payment or allowance had not been made, a qualifying distribution would have been made by that person, or by another company resident in the United Kingdom to a company which has, or is an associated company of a company which has, a qualifying presence in a unitary state at the time when the payment or allowance is made, then—

(a) no person who receives that payment or allowance shall be entitled to relief from income tax or corporation tax thereon by virtue of arrangements having effect under **[**F56section 2(1) of TIOPA 2010**]**; and

(b) the payment or allowance shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(2) Without prejudice to the generality of subsection (1) above, where a payment or allowance is not of itself a payment or allowance to which that subsection applies, but is made in conjunction with other payments of whatever nature and taken together with those payments has substantially similar effect to a distribution, then, for the purposes of subsection (1) above it shall be treated as a payment or allowance within that subsection.

(3) Any company which has received such a payment of interest as is referred to in subsection (1) above, from which income tax has not been deducted by the person making the payment, and has a qualifying presence in a unitary state at the time of the payment, shall be treated for the purposes of section 813 as a company—

(a) from which the entitlement to claim payment of the excess of a tax credit over the income tax chargeable on its income has been withdrawn by section 812(1), and

(b) which has had paid to it such an excess in an amount equal to the income tax which should have been deducted from the payment of interest.

Textual Amendments

F56 Words in s. 814(1)(a) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 31** (with Sch. 9)

Modifications etc. (not altering text)

C37 S. 814(1) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

Marginal Citations

M49 Source-1985 Sch. 13 3

814 Arrangements to avoid section 812. U.K.

M49(1) In any case where arrangements are made, whether before or after the coming into force of this section, as a result of which interest is paid or a discount is allowed by or through a person who is resident in the United Kingdom, or carries on business in the United Kingdom through a branch or agency, and it is reasonable to suppose that, if such payment or allowance had not been made, a qualifying distribution would have been made by that person, or by another company resident in the United Kingdom to a company which has, or is an associated company of a company which has, a qualifying presence in a unitary state at the time when the payment or allowance is made, then—

(a) no person who receives that payment or allowance shall be entitled to relief from income tax or corporation tax thereon by virtue of arrangements having effect under section 788(1); and

(b) the payment or allowance shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(2) Without prejudice to the generality of subsection (1) above, where a payment or allowance is not of itself a payment or allowance to which that subsection applies, but is made in conjunction with other payments of whatever nature and taken together with those payments has substantially similar effect to a distribution, then, for the purposes of subsection (1) above it shall be treated as a payment or allowance within that subsection.

(3) Any company which has received such a payment of interest as is referred to in subsection (1) above, from which income tax has not been deducted by the person making the payment, and has a qualifying presence in a unitary state at the time of the payment, shall be treated for the purposes of section 813 as a company—

(a) from which the entitlement to claim payment of the excess of a tax credit over the income tax chargeable on its income has been withdrawn by section 812(1), and

(b) which has had paid to it such an excess in an amount equal to the income tax which should have been deducted from the payment of interest.

Modifications etc. (not altering text)

C37 S. 814(1) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

Marginal Citations
M49 Source-1985 Sch. 13 3

815 Power to inspect documents.

M50Where it appears to the Board that the provisions of sections 812 to 814 may apply to a company resident outside the United Kingdom ("the foreign parent"), the Board may, by notice given to the foreign parent or any associated company of the foreign parent, require that company within such time (not being less than 30 days) as may be specified in the notice to make available for inspection any books, accounts or other documents or records whatsoever of that company where in the opinion of the Board it is proper that they should inspect such documents for the purposes of ascertaining whether those provisions apply to the foreign parent or such associated company notwithstanding that in the opinion of the person to whom the notice is given those provisions do not apply to that company or any associated company of that company.

Marginal Citations
M50 Source—1985 Sch.13 4(1)

[F57815ATransfer of a non-UK trade.

(1) This section applies where section 269C of the 1970 Act or section 140C of the Taxation of Chargeable Gains Act 1992 applies; and references in this section to company A, the transfer and the trade shall be construed accordingly.

(2) Where company A produces to the inspector an appropriate certificate given by the tax authorities of the relevant member State, this Part, including any arrangements having effect by virtue of section 788, shall apply as if the amount stated in the certificate in accordance with subsection (4)(b) below were tax payable under the law of the relevant member State.

(3) In any case where—

(a) company A is unable to obtain an appropriate certificate from the tax authorities of the relevant member State,

(b) the Board is satisfied that this is the case, and

(c) company A makes a claim to the Board under this subsection and provides the Board with such information and documents in connection with the claim as the Board may require,

the Board shall determine the amount which in their opinion is the amount of tax computed on the required basis which would have been payable under the law of the relevant member State in respect of the gains accruing to company A on the transfer but for the Mergers Directive; and this Part, including any arrangements having effect by virtue of section 788, shall apply as if the amount so determined were tax payable under the law of the relevant member State.

(4) For the purposes of this section, an appropriate certificate is one containing—

(a) a statement to the effect that gains accruing to company A on the transfer would have been chargeable to tax under the law of the relevant member State but for the Mergers Directive;

(b) a statement of the amount of tax which would have been payable under that law in respect of the gains so accruing but for that Directive; and

(c) a statement to the effect that that amount has been computed on the required basis.

(5) For the purposes of this section, the required basis is that—

(a) so far as permitted under the law of the relevant member State, any losses arising on the transfer are set against any gains so arising, and

(b) any relief available to company A under that law has been duly claimed.

(6) In this section—

"the Mergers Directive" means the Directive of the Council of the European Communities dated 23rd July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member States (no. 90/434/EEC);

"relevant member State" means the member State in which, immediately before the time of the transfer, company A carried on the trade through a branch or agency.**]**

Textual Amendments

F57 S. 815A inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 50**

Modifications etc. (not altering text)

C38 S. 815A applied (*retrospectively*) by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 140C(5)** (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), **s. 45**)
S. 815A applied (*retrospectively*) by Income and Corporation Taxes Act 1970 (c. 10), **s. 269C(5)** (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), **s. 48**)

VALID FROM 21/07/2008

[F58 815A ZA UK residents and foreign enterprises

(1) Where arrangements having effect under section 788 make the provision mentioned in subsection (2) (however expressed), that provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.

(2) The provision is that the profits of an enterprise which is resident outside the United Kingdom, or carries on a trade, profession or business the control or management of which is situated outside the United Kingdom, are not to be subject to United Kingdom tax except in so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.

(3) A person is resident in the United Kingdom for the purposes of this section if the person is so resident for the purposes of the arrangements having effect under section 788.

(4) This section does not apply in relation to—

(a) income of a company resident in the United Kingdom to which section 115(5A) applies, or

(b) income of a person resident in the United Kingdom to which section 858 of ITTOIA 2005 applies.**]**

Textual Amendments

F58 S. 815AZA inserted (with effect in accordance with s. 59(2) of the amending Act) by Finance Act 2008 (c. 9), **s. 59(1)**

VALID FROM 28/07/2000

[F59 815AA Mutual agreement procedure and presentation of cases under arrangements.

(1) Where, under and for the purposes of arrangements made with the government of a territory outside the United Kingdom and having effect under section 788—

(a) a case is presented to the Board, or to an authority in that territory, by a person concerning his being taxed (whether in the United Kingdom or that territory) otherwise than in accordance with the arrangements; and

(b) the Board arrives at a solution to the case or makes a mutual agreement with an authority in that territory for the resolution of the case,

subsections (2) and (3) below have effect.

(2) The Board shall give effect to the solution or mutual agreement, notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise).

(3) A claim for relief under any provision of the Tax Acts may be made in pursuance of the solution or mutual agreement at any time before the expiration of the period of 12 months following the notification of the solution or mutual agreement to the person affected, notwithstanding the expiration of the time limited by any other enactment for making the claim.

(4) Where arrangements having effect under section 788 include provision for a person to present a case to the Board concerning his being taxed otherwise than in accordance with the arrangements, subsections (5) and (6) below have effect.

(5) The presentation of any such case under and in accordance with the arrangements—

(a) does not constitute a claim for relief under the Tax Acts; and

(b) is accordingly not subject to section 42 of the Management Act or any other enactment relating to the making of such claims.

(6) Any such case must be presented before the expiration of—

(a) the period of 6 years following the end of the chargeable period to which the case relates; or

(b) such longer period as may be specified in the arrangements.**]**

Textual Amendments

F59 S. 815AA inserted (with effect in accordance with Sch. 30 para. 28(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 28(1)**

[F60 815B The Arbitration Convention.

(1) Subsection (2) below applies if the Arbitration Convention requires the Board to give effect to—

(a) an agreement or decision, made under the Convention by the Board (or their authorised representative) and any other competent authority, on the elimination of double taxation, or

(b) an opinion, delivered by an advisory commission set up under the Convention, on the elimination of double taxation.

(2) The Board shall give effect to the agreement, decision or opinion notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the making of an assessment or otherwise).

(3) Any enactment which limits the time within which claims for relief under any provision of the Tax Acts may be made shall not apply to a claim made in pursuance of an agreement, decision or opinion falling within subsection (1)(a) or (b) above.

(4) In this section "the Arbitration Convention" means the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23rd July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).**]**

Textual Amendments

F60 S. 815B inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 51(1)**

VALID FROM 28/07/2000

[F61 815C Exchange of information with other countries.

(1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been made with the government of any territory outside the United Kingdom with a view to the exchange of information necessary for carrying out—

(a) the domestic laws of the United Kingdom concerning income tax, capital gains tax and corporation tax in respect of income and chargeable gains; and

(b) the laws of the territory to which the arrangements relate concerning any taxes of a similar character to those taxes imposed by the laws of that territory,

and that it is expedient that those arrangements shall have effect, then those arrangements shall have effect notwithstanding anything in any enactment.

(2) Any Order in Council made under this section revoking an earlier such Order in Council may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.

(3) An Order under this section shall not be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.**]**

Textual Amendments

F61 S. 815C inserted (28.7.2000) by Finance Act 2000 (c. 17), **s. 146(1)**

816 Disclosure of information.

M51(1) Where under the law in force in any territory outside the United Kingdom provision is made for the allowance, in respect of the payment of United Kingdom income tax or corporation tax, of relief from tax payable under that law, the obligation as to secrecy imposed by the Tax Acts upon persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the government of the territory in question of such facts as may be necessary to enable the proper relief to be given under that law.

Section 790(12) shall apply for the interpretation of this subsection as it applies for the interpretation of that section.

(2) Where any arrangements have effect by virtue of section 788, the obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised officer of the Board, from disclosing to any authorised officer of the government with which the arrangements are made such information as is required to be disclosed under the arrangements.

[F62(2A) The obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised officer of the Board, from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under that Convention; and "the Arbitration Convention" here has the meaning given by section 815B(4).**]**

(3) Where a person beneficially entitled to income from any securities as defined by section 24 of the Management Act (information as to income from securities) is resident in a territory to which arrangements having effect under section 788 with respect to income tax or corporation tax relate, section 24(3) of that Act shall not exempt any bank from the duty of disclosing to the Board particulars relating to the income of that person.

(4) The obligation as to secrecy imposed by any enactments with regard to income tax or corporation tax shall not prevent the disclosure, to any authorised officer of any country to which a declaration made under section 514 of the 1970 Act (agreements about shipping etc.) relates, of such facts as may be necessary to enable relief to be duly given in accordance with the arrangements specified in the declaration.

Textual Amendments

F62 S. 816(2A) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 51(2)**

Modifications etc. (not altering text)

C39 *See* 1979(C) s.10(4)—*application to capital gains tax.*
S. 816 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 277(4)**, 289 (with ss. 60, 101(1), 171, 201(3))
S. 816 applied (27.7.1993) by 1993 c. 34, **s. 194(5)**

Marginal Citations

M51 Source—1970 s.518; 1972 s.100(1)

Status:
Point in time view as at 03/05/1994. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
Income and Corporation Taxes Act 1988, PART XVIII is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.