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# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XVIII

#### DOUBLE TAXATION RELIEF

#### CHAPTER II

##### RULES GOVERNING RELIEF BY WAY OF CREDIT

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

**C15** 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))

#### *General*

#### **792 Interpretation of credit code.**

<sup>M1</sup>(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 [<sup>F1</sup>in relation to] 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 [<sup>F2</sup>(other than special withholding tax within the meaning of Chapter 7 of Part 3 of the Finance Act 2004)];

“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.

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- (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 [<sup>F1</sup>in relation to] which the arrangements were made.

#### Textual Amendments

- F1** Words in s. 792(1)(3) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), s. 88(2)(a)
- F2** S. 792(1): words in definition of "foreign tax" inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 115(1)

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

- C16** S. 792 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

- M1** Source—1970 s.500

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

- <sup>M2</sup>(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)

- C17** 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

- M2** Source—1970 s.501; 1972 s.100 (1).

### [<sup>F3</sup>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 [<sup>F4</sup>in relation to] 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.

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- (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 [<sup>F4</sup>in relation to] 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

- F3** 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)**
- F4** Words in s. 793A(1)(a)(3) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

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

- C18** 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**

### 794 Requirement as to residence.

- <sup>M3</sup>(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 [<sup>F5</sup>income tax on employment income] 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
- [<sup>F6</sup>(bb) for tax paid under the law of any territory outside the United Kingdom in respect of the income or chargeable gains of a branch or agency in the United Kingdom of a person who is not resident in the United Kingdom, where the following conditions are fulfilled, namely—
- (i) that the territory under whose law the tax was paid is not one in which the person is liable to tax by reason of domicile, residence or place of management; and
  - (ii) 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 person resident in the United Kingdom

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and the income or gains in question had been income or gains of that person.]

(c) <sup>F7</sup> .....

#### Textual Amendments

- F5** Words in s. 794(2)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), Sch. 6 para. 103](#) (with [Sch. 7](#))
- F6** [S. 794\(2\)\(bb\)](#) inserted (with effect in accordance with [Sch. 30 para. 4\(14\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 30 para. 4\(5\)](#)
- F7** [S. 794\(2\)\(c\)](#) repealed (with effect in accordance with [Sch. 30 para. 4\(14\)](#) of the repealing Act) by [Finance Act 2000 \(c. 17\), Sch. 30 para. 4\(6\), Sch. 40 Pt. 2\(13\)](#)

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

- C19** [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](#)
- C20** [S. 794\(2\)\(bb\)](#) 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

- M3** Source—1970 s.502; 1982 s.67; 1972 s.100(1).

### 795 Computation of income subject to foreign tax.

- <sup>M4</sup>(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 <sup>F8</sup>—
- (a) 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 <sup>F9</sup>, and
  - (b) the amount of any special withholding tax levied in respect of the income.]
- (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 <sup>F10</sup> or special withholding 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—
    - <sup>F11</sup>(i) 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 <sup>F12</sup>, and
    - (ii) any underlying tax which, by virtue of section 799(1)(b) or section 799(1B)(b), does not fall to be so taken into account].
- (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).

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[<sup>F13</sup>(3A) The amount of any income or gain shall not be increased under subsection (2)(b)(i) above by so much of any underlying tax—

- (a) as represents an increase under section 801(4B); or
- (b) as represents relievable underlying tax (within the meaning of sections 806A to 806J) arising in respect of another dividend and treated as underlying tax under those sections.]

[<sup>F14</sup>(4) Subsections (2) and (3) above have effect for the purposes of corporation tax notwithstanding anything in [<sup>F15</sup>—

- (a)] section 80(5) of the 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) [<sup>F16</sup>, or
- (b) paragraph 1(3) of Schedule 29 to the Finance Act 2002 (matters to be brought into account in respect of intangible fixed assets only under that Schedule).]]

[<sup>F17</sup>(5) In this section—

- (a) “special withholding tax” has the same meaning as in Chapter 7 of Part 3 of the Finance Act 2004 (see section 107(3) of that Act); and
- (b) references to special withholding tax are to special withholding tax in respect of which a claim has been made under that Chapter.]

#### Textual Amendments

- F8** Words in s. 795(1) renumbered as s. 795(1)(a) (22.7.2004) by virtue of Finance Act 2004 (c. 12), s. 112(2)
- F9** S. 795(1)(b) and preceding word inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 112(2)
- F10** Words in s. 795(2)(a) inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 112(3)
- F11** Words in s. 795(2)(b) renumbered as s. 795(2)(b)(i) (with effect in accordance with Sch. 27 para. 1(4) of the amending Act) by virtue of Finance Act 2001 (c. 9), Sch. 27 para. 1(2)
- F12** S. 795(2)(b)(ii) and preceding word inserted (with effect in accordance with Sch. 27 para. 1(4) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 1(2)
- F13** S. 795(3A) inserted (with effect in accordance with Sch. 27 para. 1(4) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 1(3)
- F14** S. 795(4) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 41 (with Sch. 15)
- F15** Words in s. 795(4) renumbered as s. 795(4)(a) (24.7.2002) by virtue of Finance Act 2002 (c. 23), Sch. 30 para. 5(2)
- F16** S. 795(4)(b) and preceding word inserted (24.7.2002) by Finance Act 2002 (c. 23), Sch. 30 para. 5(2)
- F17** S. 795(5) inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 112(4)

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

- C21** 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
- C22** S. 795(1)(b) modified by Taxation of Chargeable Gains Act 1992 (c. 12), s. 277(1A)-(1C) (as inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 112(6))

#### Marginal Citations

- M4** Source—1970 s.503; 1972 s.100(1); 1987 Sch.15 2(18)

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**[<sup>F18</sup>795A 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 [<sup>F19</sup>in relation to] 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**

**F18** 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\(1\)](#)

**F19** Words in s. 795A(1)(b) substituted (with effect in accordance with [s. 88\(3\)](#) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [s. 88\(2\)\(a\)](#)

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

**C23** 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](#)

**796 Limits on credit: income tax.**

- <sup>M5</sup>(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 [<sup>F20</sup>but 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



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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

**F20** 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

**M5** Source—1970 s.504

### 797 Limits on credit: corporation tax.

- <sup>M6</sup>(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 [<sup>F21</sup>the following provisions of this section] below.
- (2) <sup>M7</sup>Subject to [<sup>F22</sup>subsections (2A) and (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”).
- [<sup>F23</sup>(2A) The provisions of section 11AA (profits attributable to permanent establishment), and of any regulations made under that section, apply, with the necessary modifications, in determining for the purposes of this section how much of the chargeable profits of a company resident in the United Kingdom is attributable to a permanent establishment of the company outside the United Kingdom.]
- (3) Where in the relevant accounting period there is any deduction to be made for charges on income, expenses of management [<sup>F24</sup>expenses payable (within the meaning of section 76(1))] or other amounts which can be deducted from or set against or treated as reducing profits of more than one description—
- 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
  - 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.
- [<sup>F25</sup>(3A) Where, in a case to which section 797A does not apply, a company has a non-trading deficit on its loan relationships for the relevant accounting period, then for the purposes of subsection (3) above that deficit shall be treated, to the extent that it is an amount to which a claim under—
- subsection (2)(a) of section 83 of the Finance Act 1996 (deficit set against current year profits), or
  - paragraph 4(2) of Schedule 11 to that Act (set-off of deficits in the case of insurance companies),

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relates, as an amount that can in that period be set against profits of any description but can be allocated in accordance with subsection (3) above only to the profits against which it is set off in pursuance of the claim.

(3B) For the purposes of subsection (3) above, where—

- (a) section 797A does not apply in the case of any company, and
- (b) any amount is carried forward to the relevant accounting period in pursuance of [<sup>F26</sup>subsection (3A) of] section 83 of the Finance Act 1996 <sup>F27</sup>. . . . ,

then that amount must be allocated to non-trading profits of the company for that period (so far as they are sufficient for the purpose) and cannot be allocated to any other profits.]

(4) <sup>F28</sup> . . . . .

(5) <sup>F28</sup> . . . . .

[<sup>F29</sup>(6) In this section “non-trading profits” has the same meaning as in paragraph 4 of Schedule 8 to the Finance Act 1996.]

#### **Textual Amendments**

- F21** Words in s. 797(1) substituted (with effect in accordance with s. 154(5) of the amending Act) by Finance Act 2003 (c. 14), s. 154(2)
- F22** Words in s. 797(2) substituted (with effect in accordance with s. 154(5) of the amending Act) by Finance Act 2003 (c. 14), s. 154(3)
- F23** S. 797(2A) inserted (with effect in accordance with s. 154(5) of the amending Act) by Finance Act 2003 (c. 14), s. 154(4)
- F24** Words in s. 797(3) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 34(2)
- F25** S. 797(3A)(3B) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 42(1) (with Sch. 15)
- F26** Words in s. 797(3B)(b) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), Sch. 25 para. 54
- F27** Words in s. 797(3B)(b) repealed (retrospectively) by Finance Act 1998 (c. 36), s. 82(2)(a)(4), Sch. 27 Pt. 3(17), Note
- F28** S. 797(4)(5) repealed (with effect in accordance with Sch. 3 para. 35(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 35(2), Sch. 27 Pt. 3(2), Note
- F29** S. 797(6) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 42(2) (with Sch. 15)

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

- C24** 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

#### **Marginal Citations**

- M6** Source—1970 s.505; 1972 s.100(1), (3); 1984 s.53(1)
- M7** Source—1972 s.100(4)-(6A); 1984 s.53(1); 1986 s.49; 1987 (No.2) s.77



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**[<sup>F32</sup>797A Foreign tax on [<sup>F30</sup> items giving rise to] a non-trading credit [<sup>F31</sup>: loan relationships].**

- (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 [<sup>F33</sup> item] 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 [<sup>F34</sup> that item] 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 [<sup>F35</sup>(2)(c)] of section 83 of the Finance Act 1996 or paragraph 4(3) of Schedule 11 to that Act [<sup>F36</sup>(deficit carried back and set against profits)] relates; [<sup>F37</sup>and]
  - <sup>F38</sup>(aa) [ so much of any non-trading deficit for that period as is surrendered as group relief by virtue of section 403 of the Taxes Act 1988; and]
  - (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 [<sup>F39</sup>(3A)] of that section or paragraph 4(4) of that Schedule; <sup>F40</sup> . . .
  - (c) <sup>F40</sup> . . . . .  
[<sup>F41F42</sup> . . . . . ]
- (6) Section 797(3) shall have effect as if any amount [<sup>F43</sup>carried forward to the applicable accounting period [<sup>F44</sup>under section 83(3A)] 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—

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- (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.

[<sup>F45F46</sup> .....

- (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

- F30** Word in s. 797A sidenote substituted (with effect in accordance with Sch. 30 para. 7(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 7(3)**
- F31** Words in s. 797A sidenote added (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(3)**
- F32** 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)
- F33** Word in s. 797A(1)(a) substituted (with effect in accordance with Sch. 30 para. 7(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 7(2)(a)**
- F34** Words in s. 797A(1)(b) substituted (with effect in accordance with Sch. 30 para. 7(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 7(2)(b)**
- F35** Words in s. 797A(5)(a) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(2)(a)(i)**
- F36** Words in s. 797A(5)(a) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(2)(a)(ii)**
- F37** Word at the end of s. 797A(5)(a) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(b)(4)**
- F38** S. 797A(5)(aa) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(2)(b)**
- F39** Word in s. 797A(5)(b) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(2)(c)**
- F40** 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
- F41** Words at the end of s. 797A(5) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(c)(4)**
- F42** Words in s. 797A(5) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(12)**, Note
- F43** Words in s. 797A(6) substituted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(d)(4)**
- F44** Words in s. 797A(6) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(3)**
- F45** Words at the end of s. 797A(7) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(e)(4)**
- F46** Words in s. 797A(7) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(12)**, Note

### Modifications etc. (not altering text)

- C25** 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**

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## [<sup>F47</sup>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:

### TotalDebits – 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

**F47** S. 797B inserted (24.7.2002) by Finance Act 2002 (c. 23), Sch. 30 para. 5(4)

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

**C26** 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

## [<sup>F48</sup>798 Section 796: trade income

- (1) This section has effect in relation to the application of section 796(1) to the allowance of credit for foreign tax against income tax in respect of trade income.

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- (2) In making the computations required by section 796(1)(a) and (b) there shall be deducted from the amount of the income in respect of which the credit is to be allowed deductions, charges or expenses which would be allowable in a computation of the taxpayer's liability in respect of that income.
- (3) The reference in subsection (2) to allowable deductions, charges or expenses includes a reference to a reasonable apportionment of allowable deductions or expenses which relate partly to the income and partly to other matters.
- (4) Where royalties (as defined in arrangements having effect by virtue of section 788) are paid in respect of an asset in more than one jurisdiction outside the United Kingdom, for the purposes of section 796(1)—
  - (a) royalty income arising in different jurisdictions (other than the United Kingdom) in a year of assessment in respect of that asset shall be treated as a single item of income, and
  - (b) credits available for foreign tax in respect of the royalty income shall be aggregated accordingly.
- (5) In this section “trade income” means income chargeable to tax under—
  - (a) Chapter 2 or 18 of Part 2 of ITTOIA 2005 (trade profits and post-cessation receipts),
  - (b) Chapter 3 or 10 of Part 3 of ITTOIA 2005 (profits of property businesses and post-cessation receipts), or
  - (c) Chapter 11 of Part 3 of ITTOIA 2005 (overseas property income).]

#### **Textual Amendments**

**F48** 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)**

**C27** 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](#)

### **[<sup>F49</sup>[<sup>F50</sup>798]Action 797: trade income**

- (1) This section has effect in relation to the application of section 797(1) to the allowance of credit for foreign tax against corporation tax in respect of trade income.
- (2) The reference in section 797(1) to the relevant income or gain shall be treated as referring only to income arising or gains accruing out of the transaction, arrangement or asset in connection with which the credit for foreign tax arises.
- (3) In determining for the purposes of section 797(1) the amount of corporation tax attributable to any income or gain, there shall be taken into account—
  - (a) deductions or expenses which would be allowable in the computation of the taxpayer's liability,
  - (b) a reasonable apportionment of allowable deductions or expenses which relate partly to the transaction, arrangement or asset from which the income or gain arises and partly to other matters, and

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- (c) expenses of a company connected (within the meaning given by section 839) with the taxpayer, in so far as reasonably attributable to the income or gain.
- (4) In this section and section 798B “trade income” means—
- (a) income or profits chargeable to tax under Case I, II or V of Schedule D,
  - (b) profits of a Schedule A business computed in same way as the profits of a trade in accordance with section 21A of ICTA,
  - (c) sums charged to tax under Case VI of Schedule D in accordance with section 104 of ICTA, and
  - (d) any other income or profits which by a provision of ICTA is chargeable to tax under, or computed in accordance with, Case I of Schedule D;
- but this section shall not apply in relation to income to which section 804C below applies.]]

#### Textual Amendments

- F49** S. 798A inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 104
- F50** 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)

- C28** 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

#### [<sup>F51</sup>]~~F52~~ Section 798A: special cases

- (1) Where—
- (a) a credit for foreign tax arises in connection with an asset, and
  - (b) the asset is in a hedging relationship with a derivative contract,
- in the application of section 798A(2) the reference to the income arising out of the asset shall be taken as a reference to the income arising out of the asset and the derivative contract taken together (but taking account of the income or loss from the derivative contract only in so far as reasonably attributable to the hedging relationship).
- (2) For the purposes of subsection (1)(b) an asset is in a hedging relationship with a derivative contract if—
- (a) the asset is acquired as a hedge of risk in connection with the contract, or
  - (b) the contract is entered into as a hedge of risk in connection with the asset;
- and if an asset or a contract is wholly or partly designated as a hedge for the purposes of a person's accounts, that shall be conclusive for the purpose of this subsection.
- (3) Where royalties (as defined in arrangements having effect by virtue of section 788) are paid in respect of an asset in more than one jurisdiction outside the United Kingdom, for the purposes of section 798A(2)—
- (a) royalty income arising in more than one jurisdiction (other than the United Kingdom) in a year of assessment in respect of that asset shall be treated as income arising from a single transaction, arrangement or asset, and

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- (b) credits available for foreign tax in respect of the royalty income shall be aggregated accordingly.
- (4) If a person (“A”) carrying on a trade giving rise to trade income enters into a scheme or arrangement with another person (“B”) a main purpose of which is to alter the effect of section 798A in relation to A, income received in pursuance of the scheme or arrangement shall be treated for the purposes of section 798A as trade income of B (and not as income of A).
- (5) Where—
- (a) transactions, arrangements or assets are treated by a taxpayer as a series or group (the “portfolio”),
  - (b) a number of credits for foreign tax arise in respect of the portfolio, and
  - (c) either—
    - (i) it is not reasonably practicable to prepare a separate computation of income or gain for the purposes of section 798A(2) in respect of each transaction, arrangement or asset, or
    - (ii) a separate computation of income or gain in respect of each transaction, arrangement or asset for the purposes of section 798A(2) would not, compared with an aggregated computation, make a material difference to the amount of credit for foreign tax which is allowable,
- the income or gains arising from the portfolio, or part of the portfolio, may be aggregated and apportioned for the purposes of section 798A(2) in a fair and reasonable manner.]]

#### Textual Amendments

**F51** S. 798B inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 105](#)

**F52** 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)

**C29** 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](#)

#### [<sup>F53</sup>798C] Disallowed 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)).]



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#### Textual Amendments

**F53** 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)

**C30** 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.

<sup>M8</sup>(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—

- [<sup>F54</sup>(a)] is properly attributable to the proportion of the relevant profits represented by the dividend [<sup>F55</sup>, and
- (b) does not exceed the amount calculated by applying the formula set out in subsection (1A) below.]

[<sup>F56</sup>[<sup>F57</sup>(1A) The formula is—

$$(D + U) \times M\%$$

where—

D is the amount of the dividend;

U is the amount of underlying tax that would fall to be taken into account as mentioned in subsection (1) above, apart from paragraph (b) of that subsection; and

M% is the maximum relievable rate;

and for the purposes of this subsection the maximum relievable rate is the rate of corporation tax in force when the dividend was paid.]]

[<sup>F58</sup>(1B) Where, under any arrangements, a company makes a claim for an allowance by way of credit in accordance with this Chapter—

- (a) the claim may be so framed as to exclude such amounts of underlying tax as may be specified for the purpose in the claim; and
- (b) any amounts of underlying tax so excluded shall be left out of account for the purposes of this section.]

(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

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the underlying tax to be taken into account under subsection (1) above there is to be subtracted the amount of that increase.

[<sup>F59</sup>(2A) No underlying tax shall be taken into account under subsection (1) above in the case of a dividend if, under the law of any territory outside the United Kingdom, a deduction is allowed to a resident of that territory in respect of an amount determined by reference to the dividend.]

(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; [<sup>F60</sup>and]
- (b) <sup>F61</sup> . . . . .
- (c) if the dividend is [<sup>F62</sup>not paid for a specified period], 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.

[<sup>F63</sup>(5) For the purposes of paragraphs (a) and (c) of subsection (3) above, “profits”, in the case of any period, means the profits available for distribution.

(6) In subsections (4) and (5) above, “profits available for distribution” means, in the case of any company, the profits available for distribution as shown in accounts relating to the company—

- (a) drawn up in accordance with the law of the company’s home State, and
- (b) making no provision for reserves, bad debts [<sup>F64</sup>, impairment losses] or contingencies other than such as is required to be made under that law.

(7) In this section, “home State”, in the case of any company, means the country or territory under whose law the company is incorporated or formed.]

#### Textual Amendments

**F54** Words in s. 799(1) renumbered as s. 799(1)(a) (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by virtue of Finance Act 2000 (c. 17), Sch. 30 para. 8(2)

**F55** S. 799(1)(b) and preceding word inserted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 8(2)

**F56** S. 799(1A) inserted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 8(3)

**F57** S. 799(1A) substituted (with effect in accordance with Sch. 27 para. 2(4)(5) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 2(2)

**F58** S. 799(1B) inserted (with effect in accordance with Sch. 27 para. 2(4)(5) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 2(3)

**F59** S. 799(2A) inserted (with effect in accordance with s. 85(2) of the amending Act) by Finance Act 2005 (c. 7), s. 85(1)

**F60** Word at the end of s. 799(3)(a) inserted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 8(4)(a)

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- F61** S. 799(3)(b) repealed (with effect in accordance with Sch. 30 para. 8(5)(6) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 8(4)(b), **Sch. 40 Pt. 2(13)**, Note
- F62** Words in s. 799(3)(c) substituted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 8(4)(c)**
- F63** S. 799(5)-(7) added (with effect in accordance with Sch. 30 para. 9(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 9(2)**
- F64** Words in s. 799(6)(b) inserted (with effect in accordance with s. 80(3)(4) of the amending Act) by Finance Act 2005 (c. 7), **Sch. 4 para. 7**

#### Marginal Citations

- M8** Source—1970 s.506; 1976 s.50(3)

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

**F65** .....

#### Textual Amendments

- F65** S. 800 repealed (with effect in accordance with Sch. 30 para. 10(2) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 10(1), **Sch. 40 Pt. 2(13)**, Note

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

<sup>M9</sup>(1) Where a company resident outside the United Kingdom (“the overseas company”) pays a dividend to a [<sup>F66</sup> company falling within subsection (1A) below (“the relevant company”)] and the overseas company is related [<sup>F67</sup>to the relevant 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.

[<sup>F68</sup>(1A) A company falls within this subsection if—

- (a) it is resident in the United Kingdom; or
- (b) it is resident outside the United Kingdom but the dividend mentioned in subsection (1) above forms part of the profits of a [<sup>F69</sup>permanent establishment] of the company’s in the United Kingdom.]

(2) Where the overseas company has received a dividend from a third company and the third company is related to the overseas company, then, [<sup>F70</sup>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.

[<sup>F71</sup>(2A) Section 799(1)(b) applies for the purposes of subsection (2) above only—

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- (a) if the overseas company and the third company are not resident in the same territory; or
- [ if the overseas company is an ADP controlled foreign company as respects any of its accounting periods and the dividend mentioned in subsection (1) above is an ADP dividend of that company (in which case see also subsection (2B)); or]
- <sup>F72</sup>(aa) [ if the overseas company is an ADP controlled foreign company as respects any of its accounting periods and the dividend mentioned in subsection (1) above is an ADP dividend of that company (in which case see also subsection (2B)); or]
- (b) in such other cases as may be prescribed by regulations made by the Treasury.]

<sup>F73</sup>(2B) In any case falling within subsection (2A)(aa) above, section 799(1)(b) applies for the purposes of subsection (2) above as if for section 799(1A) there were substituted—

“(1A) The formula is—

$$\frac{D}{1 - X} \times X$$

where—

D is the amount of the dividend; and

X is the maximum relievable rate, expressed as a decimal fraction;

and for the purposes of this subsection the maximum relievable rate is the rate of corporation tax in force when the dividend was paid.”.]

(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.

<sup>F74</sup>(4A) <sup>F75</sup>.....

(4B) <sup>F75</sup>.....

(4C) <sup>F75</sup>.....

(4D) <sup>F75</sup>.....]

(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.

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[<sup>F76</sup>(6) 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, by virtue only of section 748(1)(a), no apportionment under section 747(3) falls to be made as respects that accounting period;
- (b) an “ADP dividend” of a controlled foreign company is a dividend by virtue of which the controlled foreign company is an ADP controlled foreign company as respects any of its accounting periods.

(7) In this section—

“accounting period”, in relation to a controlled foreign company, has the same meaning as in Chapter 4 of Part 17 (see section 751);

“controlled foreign company” has the same meaning as in Chapter 4 of Part 17 (see section 747(2)).]

#### Textual Amendments

- F66** Words in s. 801(1) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(8)(a)**
- F67** Words in s. 801(1) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(8)(b)**
- F68** S. 801(1A) inserted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(9)**
- F69** Words in s. 801(1A)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**
- F70** Words in s. 801(2) substituted (with effect in accordance with s. 91(8) of the amending Act) by Finance Act 2005 (c. 7), **s. 91(5)**
- F71** S. 801(2A) inserted (with effect in accordance with Sch. 30 para. 11(3)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 11(2)**
- F72** S. 801(2A)(aa) inserted (with effect in accordance with s. 89(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 89(2)**
- F73** S. 801(2B) inserted (with effect in accordance with s. 89(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 89(3)**
- F74** S. 801(4A)-(4D) inserted (with effect in accordance with Sch. 27 para. 3(4)(5) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 27 para. 3(3)**
- F75** S. 801(4A)-(4D) repealed (with effect in accordance with s. 91(8) of the repealing Act) by Finance Act 2005 (c. 7), s. 91(6), **Sch. 11 Pt. 2(9)**, Note
- F76** S. 801(6)(7) inserted (with effect in accordance with s. 89(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 89(4)**

#### Marginal Citations

- M9** Source—1970 s.508; 1971 s.26(2)

[<sup>F77</sup>**801A**Restriction of relief for underlying tax.

(1) This section applies where—

- (a) [<sup>F78</sup>a company (“the claimant 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”);

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- (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 [<sup>F79</sup>the claimant 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) [<sup>F79</sup>the claimant company], a company related to that company or a person connected with [<sup>F79</sup>the claimant company]; and
    - (b) a person who was not under the control of [<sup>F79</sup>the claimant 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 [<sup>F79</sup>the claimant 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



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- (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

- F77** S. 801A inserted (with effect in accordance with s. 90(2) of the amending Act) by Finance Act 1997 (c. 16), s. 90(1)
- F78** Words in s. 801A(1)(a) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 4(11)
- F79** Words in s. 801A(2)(7)(11) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 4(12)

#### [<sup>F80</sup> 801B Dividends paid out of transferred profits.

- (1) This section applies where—
- 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;
  - 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
  - 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—
- by any company resident outside the United Kingdom (whether or not company 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

- F80** 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)

#### [<sup>F81</sup> 801C Separate streaming of dividend so far as representing an ADP dividend of a CFC.

- (1) This section applies in any case where—

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- (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

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- (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.

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- (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

**F81** 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.

F82

#### Textual Amendments

**F82** S. 802 repealed (with effect in accordance with Sch. 30 para. 14(2) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 14(1), Sch. 40 Pt. 2(13), Note

### 803 Underlying tax reflecting interest on loans.

<sup>M10</sup>(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 [<sup>F83</sup> (“the overseas 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 [<sup>F84</sup> interest or dividends earned or received] 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
- [<sup>F85</sup>(d) if the company which received the interest or dividends (“the company”) had been resident in the United Kingdom, [<sup>F86</sup>section 798A] would apply in relation to that company.]

- (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.

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(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, [<sup>F87</sup>on so much of the interest or dividends as exceeds the amount of the company's relevant expenditure which is properly attributable to the earning of the interest or dividends].

(4) <sup>F88</sup> .....

(5) <sup>F88</sup> .....

(6) <sup>F88</sup> .....

(7) <sup>F88</sup> .....

(8) <sup>F88</sup> .....

(9) <sup>F88</sup> .....

[<sup>F89</sup>(10) In subsection (1) above “bank” means a company carrying on, in the United Kingdom or elsewhere, any trade which includes the receipt of interest or dividends, and section 839 applies for the purposes of that subsection.]

#### Textual Amendments

**F83** Words in s. 803(1)(b) inserted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), s. 106(2)(a)

**F84** Words in s. 803(1)(c) substituted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), s. 106(2)(b)

**F85** S. 803(1)(d) substituted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), s. 106(2)(c)

**F86** Words in s. 803(1)(d) substituted (with effect in accordance with s. 86(3)(4) of the amending Act) by Finance Act 2005 (c. 7), s. 86(2)(a)

**F87** Words in s. 803(3) substituted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), s. 106(3)

**F88** S. 803(4)-(9) repealed (with effect in accordance with s. 86(3)(4) of the repealing Act) by Finance Act 2005 (c. 7), s. 86(2)(b), Sch. 11 Pt. 2(8), Note

**F89** S. 803(10) substituted for s. 803(10)(11) (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), s. 106(10)

#### Marginal Citations

**M10** Source—1982 s.66; 1987 (No.2) s.68

### [<sup>F90</sup>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.

[ Where—

<sup>F91</sup>(1A) (a) a company is (within the meaning of section 801) an ADP controlled foreign company as respects any of its accounting periods, and

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- (b) the whole or any part of the profits or gains of that accounting period are included in the aggregate profits, or aggregate profits or gains, mentioned in subsection (1) above,
- subsection (2) below shall have effect as if the companies mentioned in subsection (1) above did not include that company.]
- (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

- F90** 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)
- F91** S. 803A(1A) inserted (with effect in accordance with s. 90(3) of the amending Act) by Finance Act 2005 (c. 7), s. 90(2)

#### *Miscellaneous rules*

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

- <sup>M11</sup>(1) Subject to the provisions of this section, credit for overseas tax paid in respect of [<sup>F92</sup>any 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



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- (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.
- [<sup>F93</sup>(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 [<sup>F94</sup>section 205 or 220 of ITTOIA 2005], 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 [<sup>F94</sup>section 205 or 220 of ITTOIA 2005], 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 [<sup>F95</sup>to income tax] of an amount such that income tax on it at the basic rate is equal to the excess [<sup>F96</sup>and be liable for any tax so chargeable]; 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 [<sup>F97</sup>section 220 of ITTOIA 2005], 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.]

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- (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 [<sup>F98</sup>on or before the fifth anniversary of the 31st January next following] that year or, where there is more than one year of assessment in respect of which such relief may be given, [<sup>F98</sup>on or before the fifth anniversary of the 31st January next following] the later of them.
- (8) In this section—
- <sup>F99</sup>“overlap profit” means an amount of profits or gains which, by virtue of [<sup>F100</sup>Chapter 15 of Part 2 of ITTOIA 2005], 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;
- <sup>F101</sup>.....
- “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;
- <sup>F101</sup>.....
- <sup>F102</sup>.....; 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

- F92** 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\(1\)](#))
- F93** 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\(1\)](#))
- F94** Words in s. 804(5)(b)(5A)(b) 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. 323\(2\)](#) (with [Sch. 2](#))
- F95** Words in s. 804(5B)(a) 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. 323\(3\)\(a\)](#) (with [Sch. 2](#))
- F96** Words in s. 804(5B)(a) inserted (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. 323\(3\)\(b\)](#) (with [Sch. 2](#))
- F97** Words in s. 804(5C) 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. 323\(4\)](#) (with [Sch. 2](#))
- F98** Words in s. 804(7) substituted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 21 para. 22](#)
- F99** 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\(1\)](#))
- F100** S. 804(8): words in definition of "overlap profit" 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. 323\(5\)](#) (with [Sch. 2](#))

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**F101** 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))

**F102** 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

**M11** Source—1970 s.510; 1971 Sch.6 75

### [<sup>F103</sup>804ZB] 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).

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- (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

**F103** 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)

#### [<sup>F103</sup> 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

**F103** 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)

#### [<sup>F103</sup> 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.

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- (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

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(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

**F103** 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)

[<sup>F104</sup>804A<sup>F105</sup> **Life assurance companies with overseas branches etc: restriction of credit.**]

[<sup>F106</sup>(1) Subsection (2) below applies where credit for tax—

- (a) which is payable under the laws of a territory outside the United Kingdom in respect of insurance business carried on by a company through a [<sup>F107</sup>permanent establishment] in that territory, and
- (b) which is 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 under Case I or Case VI of Schedule D in respect of the profits, computed in accordance with the provisions applicable to Case I of Schedule D, of life assurance business or any category of life assurance business carried on by the company in an accounting period (in this section referred to as “the relevant profits”).

(1A) For the purposes of paragraph (b) of subsection (1) above, the cases where tax payable under the laws of a territory outside the United Kingdom is “computed otherwise than wholly by reference to profits arising in that territory” are those cases where the charge to tax in that territory falls within subsection (1B) below.

(1B) A charge to tax falls within this subsection if it is such a charge made otherwise than by reference to profits as (by disallowing their deduction in computing the amount chargeable) to require sums payable and other liabilities arising under policies to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the company.]

(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.

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- (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—

[<sup>F108</sup>A is an amount equal to the amount of the relevant profits before making any deduction authorised by subsection (5) below;] 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 <sup>F109</sup> . . . 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 [<sup>F110</sup>the relevant profits].]

#### Textual Amendments

**F104** 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

**F105** S. 804A sidenote substituted (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by virtue of Finance Act 2000 (c. 17), Sch. 30 para. 16(5)

**F106** S. 804A(1)-(1B) substituted for s. 804A(1) (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 16(2)

**F107** Words in s. 804A(1)(a) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)

**F108** Words in s. 804A(3) substituted (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 16(3)

**F109** Words in s. 804A(3) repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 41 Pt. 5(3), Note

**F110** Words in s. 804A(5) substituted (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 30 para. 16(4)

#### [<sup>F111</sup>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



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- (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 <sup>[F112]</sup> or section 438B) 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) <sup>[F113]</sup>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 <sup>[F114]</sup> or 438B] 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) <sup>[F113]</sup>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 <sup>M12</sup>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 <sup>[F115]</sup>the investment income taken into account in that determination which would be referable to that category by virtue of

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section 432E if the investment income were the only amount included in the net amount]; and

(b) whose denominator is the whole of that [<sup>F116</sup>investment income].

[ The Treasury may by regulations amend subsection (7) above; and the regulations <sup>F117</sup>(7A) may include amendments having effect in relation to accounting periods during which they are made.]

(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

**F111** 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)**

**F112** Words in s. 804B(2) inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76(2), **Sch. 25 para. 6(a)**

**F113** Words in s. 804B(4)(b)(5)(b) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(k)**

**F114** Words in s. 804B(4) inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76(2), **Sch. 25 para. 6(b)**

**F115** Words in s. 804B(7)(a) substituted (with effect in accordance with Sch. 33 para. 11(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 11(1)(a)**

**F116** Words in s. 804B(7)(b) substituted (with effect in accordance with Sch. 33 para. 11(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 11(1)(b)**

**F117** S. 804B(7A) inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 7**

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

**C31** 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**)

**C32** S. 804B 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), 23** (as amended by: S.I. 2007/2134, **regs. 1(1)(2), 22**; S.I. 2008/1937, **regs. 1(1)(2), 10**)

#### Marginal Citations

**M12** 1989 c. 26.

[<sup>F118</sup>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,

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- (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 [<sup>F119</sup>relevant income] 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 [<sup>F119</sup>relevant income] 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,

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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.
- [<sup>F120</sup>(13) For the purposes of the operation of this section in relation to any income or gain in respect of which credit falls to be allowed under any arrangements, the amount of the income or gain that is referable to a category of insurance business is the same fraction of the income and gain as the fraction of the foreign tax that is attributable to that category of business in accordance with section 804B.]
- (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

**F118** 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)**

**F119** Words in s. 804C(4)(5) substituted (with effect in accordance with Sch. 33 para. 11(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 11(3)**

**F120** S. 804C(13) substituted (with effect in accordance with Sch. 33 para. 11(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 11(4)**

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### [<sup>F118</sup>804D] 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 <sup>M13</sup>Finance 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

**F118** 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)

**C33** 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**)

**C34** 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

**M13** 1989 c. 26.

### [<sup>F118</sup>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.

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- (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 <sup>M14</sup>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.]

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**Textual Amendments**

**F118** 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)**

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**Marginal Citations**

**M14** 1985 c. 6.

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## **[<sup>F121</sup>804] 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**

**F121** 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

## **[<sup>F122</sup>804] Reduction 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**

**F122** 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.**

<sup>M15</sup>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)**

**C35** See s.732(4)—dealers in securities.

**C36** 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**

**M15** Source—1970 s.511; 1972 s.100(1)



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## 806 Time limit for claims etc.

- [<sup>F123</sup>(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—
- (a) shall, in the case of any income or chargeable gain which falls to be charged to income tax for a year of assessment, be made on or before—
    - (i) the fifth anniversary of the 31st January next following that year of assessment, or
    - (ii) if later, the 31st January next following the year of assessment in which the foreign tax is paid;
  - (b) shall, in the case of any income or chargeable gain which falls to be charged to corporation tax for an accounting period, be made not more than—
    - (i) six years after the end of that accounting period, or
    - (ii) if later, one year after the end of the accounting period in which the foreign tax is paid.]
- (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.
- [<sup>F124</sup>(3) Subject to subsection (5) below, where—
- (a) any credit for foreign tax has been allowed to a person under any arrangements, and
  - (b) the amount of that credit is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the laws of a territory outside the United Kingdom,
- that person shall give notice in writing to an officer of the Board that an adjustment has been made that has rendered the amount of the credit excessive.
- (4) A notice under subsection (3) above must be given within one year from the time of the making of the adjustment.
- (5) Subsections (3) and (4) above do not apply where the adjustment is one the consequences of which in relation to the credit fall to be given effect to in accordance with regulations made under—
- (a) section 182(1) of the <sup>M16</sup>Finance Act 1993 (regulations relating to individual members of Lloyd's); or
  - (b) section 229 of the <sup>M17</sup>Finance Act 1994 (regulations relating to corporate members of Lloyd's).
- (6) A person who fails to comply with the requirements imposed on him by subsections (3) and (4) above in relation to any adjustment shall be liable to a penalty of an amount not exceeding the amount by which the credit allowed has been rendered excessive by reason of the adjustment.]

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#### Textual Amendments

**F123** S. 806(1) substituted (with effect in accordance with [Sch. 30 para. 20\(3\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 30 para. 20\(2\)](#)

**F124** S. 806(3)-(6) inserted (17.3.1998 with effect in accordance with [s. 107\(2\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 107\(1\)](#)

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

**C37** See [s.448](#)—*overseas life assurance companies*.

**C38** [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

**M16** [1993 c. 34](#).

**M17** [1994 c. 9](#).

*<sup>F125</sup> Foreign dividends: onshore pooling and utilisation of eligible unrelieved foreign tax*

#### Textual Amendments

**F125** [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—

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- (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.
- [<sup>F126</sup>But if that is so in any case by reason only of the mixer cap restricting the amount of underlying tax that is treated as mentioned in subsection (2) or (3) of section 801 in the case of a dividend paid by a company resident in the United Kingdom, the case does not fall within Case B.]
- (6) In determining whether the circumstances are as set out in subsection (4) or (5) above, sections 806C and 806D shall be disregarded.

#### Textual Amendments

**F126** Words in s. 806A(5) added (with effect in accordance with Sch. 27 para. 4(3) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 4(2)

### 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.
- [<sup>F127</sup>(3) In Case B, the amount (if any) by which—
  - (a) the aggregate of the upper rate amounts falling to be brought into account for the purposes of this paragraph by virtue of subsection (4) or (5) below, exceeds
  - (b) the amount of tax to be taken into account as mentioned in section 799(1) in the case of the Case V dividend, before any increase under section 801(4B),shall be an amount of eligible unrelieved foreign tax.
- (4) In the case of the Case V dividend (but not any lower level dividend), the upper rate amount to be brought into account for the purposes of subsection (3)(a) above—
  - (a) in a case where the mixer cap does not restrict the amount of tax to be taken into account as mentioned in section 799(1) (before any increase under section 801(4B)) in the case of that dividend, is that amount of tax; or
  - (b) in a case where the mixer cap restricts the amount of tax to be so taken into account in the case of that dividend, is the greater amount that would have been

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so taken into account if, in the application of the formula in section 799(1A) in the case of that dividend (but not any lower level dividend) M% had, in relation to—

- (i) so much of D as does not represent any lower level dividend, and
- (ii) so much of U as is not underlying tax attributable to any lower level dividend,

been the upper percentage.

(5) In the case of any dividend (the “relevant dividend”) received as mentioned in subsection (2) or (3) of section 801 which is a lower level dividend in relation to the Case V dividend, the upper rate amount to be brought into account for the purposes of subsection (3)(a) above—

- (a) in a case where the mixer cap does not restrict the amount of underlying tax that is treated as mentioned in subsection (2) or (3), as the case may be, of section 801 in the case of the relevant dividend, is the appropriate portion of that amount of underlying tax;
- (b) in a case where—
  - (i) the relevant dividend was paid by a company resident in the United Kingdom, and
  - (ii) the mixer cap restricts the amount of underlying tax that is treated as mentioned in subsection (2) or (3), as the case may be, of section 801 in the case of that dividend,

is the appropriate portion of that restricted amount of underlying tax; or

- (c) in a case where—
  - (i) the relevant dividend was paid by a company resident outside the United Kingdom, and
  - (ii) the mixer cap restricts the amount of underlying tax that is treated as mentioned in subsection (2) or (3), as the case may be, of section 801 in the case of that dividend,

is the appropriate portion of the greater amount of tax that would have been so treated if, in the application of the formula in section 799(1A) in the case of that dividend (but not any other dividend) M% had, in relation to so much of D as does not represent any lower level dividend, and so much of U as is not underlying tax attributable to any lower level dividend, been the upper percentage.

(6) For the purposes of subsection (5) above, the “appropriate portion” of any amount there mentioned in the case of a dividend is found by multiplying that amount 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), [F<sup>128</sup>(4)(b) or (5)(c)] above, sections 806C and 806D shall be disregarded.

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(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.

#### Textual Amendments

**F127** S. 806B(3)-(6) substituted (with effect in accordance with Sch. 27 para. 5(4) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 5(2)

**F128** Words in s. 806B(9) substituted (with effect in accordance with Sch. 27 para. 5(4) of the amending Act) by Finance Act 2001 (c. 9), Sch. 27 para. 5(3)

### 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;

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- (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

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- (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—



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- (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—

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- (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,

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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.]

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*[<sup>F129</sup> Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere*

**Textual Amendments**

**F129** 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;
  - <sup>F130</sup>(bb) in relation to income tax, take any reference to a dividend chargeable under Case V of Schedule D as a reference to a dividend chargeable under Chapter 4 of Part 4 of ITTOIA 2005;]
  - (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. ”.]

**Textual Amendments**

**F130** S. 806K(2)(bb) inserted (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. 324 (with Sch. 2)

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

**C39** 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)

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*<sup>F131</sup> Unrelieved foreign tax: profits of overseas branch or agency*

**Textual Amendments**

**F131** 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 [<sup>F132</sup>permanent establishment] 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 [<sup>F132</sup>permanent establishment]—
  - (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 [<sup>F132</sup>permanent establishment] 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,

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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 [<sup>F132</sup>permanent establishment] is the profits of the overseas [<sup>F132</sup>permanent establishment] 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.

[<sup>F133</sup>(7) In this section—

“overseas permanent establishment” means a permanent establishment through which a company carries on a trade in a territory outside the United Kingdom; and

“permanent establishment”—

- (a) if there are arrangements having effect under section 788 in relation to the territory concerned that define the expression, has the meaning given by those arrangements, and  
(b) if there are no such arrangements, or if they do not define the expression, has the meaning given by section 148 of the Finance Act 2003.]

#### Textual Amendments

**F132** Words in s. 806L(1)(2)(4)(5) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)

**F133** S. 806L(7) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 27 para. 1(3)

#### 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 [<sup>F134</sup>permanent establishment], the amount of any unrelieved foreign tax which arises in that accounting period in respect of the company's income from that overseas [<sup>F134</sup>permanent establishment] 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)).

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- (3) If a company—
- (a) at any time ceases to have a particular overseas [F134 permanent establishment] in a particular territory (“the old [F134 permanent establishment]”), but
  - (b) subsequently again has an overseas [F134 permanent establishment] in that territory (“the new [F134 permanent establishment]”),
- the old [F134 permanent establishment] and the new [F134 permanent establishment] shall be regarded as different overseas [F134 permanent establishments].
- (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 [F134 permanent establishments] in that territory, taken together, then, for the purposes of—
- (a) section 806L, and
  - (b) subsection (3) above,
- those overseas [F134 permanent establishments] shall be treated as if they together constituted a single overseas [F134 permanent establishment] of the company.
- (5) Unrelieved foreign tax arising in respect of qualifying income from a particular overseas [F134 permanent establishment] 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.]

#### **Textual Amendments**

**F134** Words in s. 806M(2)-(5) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)



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