



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVIII

DOUBLE TAXATION RELIEF

CHAPTER II

RULES GOVERNING RELIEF BY WAY OF CREDIT

General

792 Interpretation of credit code.

^{M1}(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 [^{F1}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 [^{F2}(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.

(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.

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- (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 [^{F1}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.

- ^{M2}(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.
- [^{F3}(3) Credit against income tax is given effect at Step 6 of the calculation in section 23 of ITA 2007.]

Textual Amendments

- F3** S. 793(3) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 192 (with Sch. 2)

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).

[^{F4}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 [^{F5}in relation to] that territory, or

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- (b) under the law of that territory in consequence of any such arrangements, credit may not be allowed in respect of that tax, whether the relief has been used or not.
- (2) Where, under arrangements having effect by virtue of section 788, credit may be allowed in respect of an amount of tax, credit by way of unilateral relief may not be allowed in respect of that tax.
- (3) Where arrangements made [^{F5}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

- F4** 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)
- F5** 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.

- ^{M3}(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 [^{F6}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
- [^{F7}(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

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

(c) ^{F8}

Textual Amendments

- F6** 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](#))
- F7** [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)**
- F8** [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.

- ^{M4}(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 ^{F9}—
- (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 ^{F10}, 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 ^{F11} 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—
- ^{F12}(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 ^{F13}, 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].

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- (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).
- [^{F14}(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.]
- [^{F15}(4) Subsections (2) and (3) above have effect for the purposes of corporation tax notwithstanding anything in [^{F16}—
- (a) [^{F17}section 464(1) of CTA 2009] (matters to be brought into account in the case of loan relationships only under [^{F17}Part 5] of that Act) [^{F18}; or
 - (b) [^{F19}section 906(1) of CTA 2009] (matters to be brought into account in respect of intangible fixed assets only under [^{F19}Part 8 of that Act]).]
- [^{F20}(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

- F9** Words in s. 795(1) renumbered as s. 795(1)(a) (22.7.2004) by virtue of [Finance Act 2004 \(c. 12\)](#), s. [112\(2\)](#)
- F10** S. 795(1)(b) and preceding word inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), s. [112\(2\)](#)
- F11** Words in s. 795(2)(a) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), s. [112\(3\)](#)
- F12** 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\(2\)](#)
- F13** 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\(2\)](#)
- F14** 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\(3\)](#)
- F15** 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](#))
- F16** 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\(2\)](#)
- F17** Words in s. 795(4)(a) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [Sch. 1 para. 245\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F18** S. 795(4)(b) and preceding word inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 5\(2\)](#)
- F19** Words in s. 795(4)(b) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [Sch. 1 para. 245\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F20** 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](#)

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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)

[^{F21}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 [^{F22}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

- F21** 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)
- F22** 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.

- ^{M5}(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 [^{F23}but allowing for the making of any other income tax reduction under the Income Tax Acts][^{F24}, except a reduction under section 26 of FA 2005])—
- (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.

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- (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.
- [^{F25}(2A) See section 29(2) and (3) of ITA 2007 (tax reductions limited by reference to tax liability) for further limits on the total amount of credit for foreign tax to be allowed to a person against income tax.]
- (3) Without prejudice to subsections (1) and (2) above, the total credit for foreign tax to be allowed to a person against income tax for any year of assessment under all arrangements having effect by virtue of section 788 shall not exceed the total income tax payable by him for that year of assessment, [^{F26}less the total amount of the tax treated under section 414 of ITA 2007 (gift aid) as deducted from gifts made by him in that year].

Textual Amendments

F23 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**

F24 Words in s. 796(1) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 193(2)** (with Sch. 1 para. 193(5) (as inserted by S.I. 2007/3506, **arts. 1, 3(5)** and as amended by S.I. 2009/2859, **arts. 1, 4(6)(b)**), Sch. 2)

F25 S. 796(2A) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 193(3)** (with Sch. 1 para. 193(5) (as inserted by S.I. 2007/3506, **arts. 1, 3(5)** and as amended by S.I. 2009/2859, **arts. 1, 4(6)(b)**), Sch. 2)

F26 Words in s. 796(3) substituted (6.4.2007 with effect in accordance with S.I. 2009/2859, **art. 1(2)**) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 193(4)** (as substituted by S.I. 2009/2859, **art. 4(6)(a)**) (with Sch. 2)

Marginal Citations

M5 Source—1970 s.504

797 Limits on credit: corporation tax.

- ^{M6}(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 [^{F27}the following provisions of this section] below.
- (2) ^{M7}Subject to [^{F28}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”).
- [^{F29}(2A) The provisions of [^{F30}Chapter 4 of Part 2 of CTA 2009 (profits attributable to permanent establishment), and of any regulations made under section 24 of that Act], 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

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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 [^{F31}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—

- (a) the company may for the purposes of this section allocate the deduction in such amounts and to such of its profits for that period as it thinks fit; and
- (b) the amount of the relevant income or gain shall be treated for the purposes of subsection (2) above as reduced or, as the case may be, extinguished by so much (if any) of the deduction as is allocated to it.

[^{F32}(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—

- [^{F33}(a) which falls to be set off under section 388(1) of CTA 2009 (insurance companies: basic rule: deficit set off against income and gains of deficit period), or
- (b) to which a claim under section 459(1)(a) of that Act (claim to set off deficit against profits of deficit period) 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 [^{F34}section 457(1) of CTA 2009]^{F35} . . . ,

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) ^{F36}

(5) ^{F36}

[^{F37}(6) In this section “non-trading profits” has the same meaning as in [^{F38}Chapter 16 of Part 5 of CTA 2009 (see section 457(5) of that Act)].]

Textual Amendments

- F27** 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)
- F28** 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)
- F29** 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)
- F30** Words in s. 797(2A) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 246(2) (with Sch. 2 Pts. 1, 2)
- F31** 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)

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- F32** 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)
- F33** Words in s. 797(3A) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 246(3)** (with Sch. 2 Pts. 1, 2)
- F34** Words in s. 797(3B)(b) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 246(4)** (with Sch. 2 Pts. 1, 2)
- F35** 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
- F36** 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
- F37** 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)
- F38** Words in s. 797(6) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 246(5)** (with Sch. 2 Pts. 1, 2)

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

[^{F41}797A Foreign tax on [^{F39}items giving rise to] a non-trading credit [^{F40}: loan relationships].

- (1) This section applies for the purposes of any arrangements where, in the case of any company—
- any non-trading credit relating to an [^{F42}item] is brought into account for the purposes of [^{F43}Part 5 of CTA 2009] (loan relationships) for any accounting period (“the applicable accounting period”); and
 - there is in respect of [^{F44}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 [^{F45}section 299 of CTA 2009] on the profits ^{F46} . . . 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—
- 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
 - 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 [^{F47}Part 5 of CTA 2009] (loan relationships) less the aggregate of the amounts specified in subsection (5) below.

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- (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 [F48]section 389(1) or 459(1)(b) of CTA 2009[[F49](deficit carried back and set against profits)] relates; [F50]and]
 - [F51] (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 [F52]section 391 or 457(1) of CTA 2009]; [F53]
 - (c) [F53]
 - [F54][F55]]
- (6) Section 797(3) shall have effect as if any amount [F56]carried forward to the applicable accounting period [F57]under [F58]section 457(1) of CTA 2009]] 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) [F59]as the result of—
 - (i) the application of section 388(1) of CTA 2009 (insurance companies: basic rule: deficit set off against income and gains of deficit period), or
 - (ii) a claim under section 459(1)(a) of that Act (claim to set off deficit against profits of deficit period),]
 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.
- [F60][F61]]
- (8) In this section “non-trading profits” has the same meaning as in [F62]Chapter 16 of Part 5 of CTA 2009 (see section 457(5) of that Act)].]

Textual Amendments

- F39** 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)**
- F40** Words in s. 797A sidenote added (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(3)**
- F41** 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)
- F42** 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)**
- F43** Words in s. 797A(1)(a) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 247(2)** (with Sch. 2 Pts. 1, 2)
- F44** 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)**
- F45** Words in s. 797A(2) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 247(3)(a)** (with Sch. 2 Pts. 1, 2)

Status: Point in time view as at 01/04/2009.

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- F46** Words in s. 797A(2) repealed (1.4.2009 with effect in accordance with s. 1329(1) of the repealing Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 247(3)(b), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)
- F47** Words in s. 797A(4) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 247(4) (with Sch. 2 Pts. 1, 2)
- F48** Words in s. 797A(5)(a) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 247(5)(a) (with Sch. 2 Pts. 1, 2)
- F49** 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)
- F50** Word at the end of s. 797A(5)(a) inserted (retrospectively) by Finance Act 1998 (c. 36), s. 82(2)(b)(4)
- F51** 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)
- F52** Words in s. 797A(5)(b) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 247(5)(b) (with Sch. 2 Pts. 1, 2)
- F53** 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
- F54** Words at the end of s. 797A(5) inserted (retrospectively) by Finance Act 1998 (c. 36), s. 82(2)(c)(4)
- F55** 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
- F56** Words in s. 797A(6) substituted (retrospectively) by Finance Act 1998 (c. 36), s. 82(2)(d)(4)
- F57** 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)
- F58** Words in s. 797A(6) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 247(6) (with Sch. 2 Pts. 1, 2)
- F59** Words in s. 797A(7)(c) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 247(7) (with Sch. 2 Pts. 1, 2)
- F60** Words at the end of s. 797A(7) inserted (retrospectively) by Finance Act 1998 (c. 36), s. 82(2)(e)(4)
- F61** 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
- F62** Words in s. 797A(8) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), Sch. 1 para. 247(8) (with Sch. 2 Pts. 1, 2)

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

[^{F63}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 non-trading credit relating to an item is brought into account for the purposes of [^{F64}Part 8 of CTA 2009] (intangible fixed assets) for an accounting period (“the applicable accounting period”), and
 - 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 [^{F65}that Part of that Act] 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.

Status: Point in time view as at 01/04/2009.

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- (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 [^{F66}Part 8 of CTA 2009] (intangible fixed assets), and

Amount Carried Forward is the amount (if any) carried forward to the next accounting period of the company under [^{F66}section 753(3) of that Act] (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

- F63** S. 797B inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(4)**
- F64** Words in s. 797B(1)(a) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 248(a)** (with Sch. 2 Pts. 1, 2)
- F65** Words in s. 797B(2) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 248(b)** (with Sch. 2 Pts. 1, 2)
- F66** Words in s. 797B(4) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 248(c)** (with Sch. 2 Pts. 1, 2)

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**

[^{F67}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.

[^{F68}(1A) The references in section 796 and this section to income in respect of which a credit for foreign tax is to be allowed are to be treated as referring only to income arising out of the transaction, arrangement or asset in connection with which the credit for foreign tax arises.]

- (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.

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- (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 [^{F69}in respect of which the credit is to be allowed] 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

- F67** 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\(1\)](#)
- F68** S. 798(1A) inserted (with effect in accordance with s. 57(4) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 57\(2\)](#)
- F69** Words in s. 798(3) inserted (with effect in accordance with s. 57(4) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 57\(3\)](#)

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](#)

[^{F70}[^{F71}798] **Section 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—
- [^{F72}(a) income chargeable to tax under Chapter 2 or 15 of Part 3 of CTA 2009 (trade profits and post-cessation receipts),
- (b) income chargeable to tax under Chapter 3 or 9 of Part 4 of CTA 2009 (profits of property businesses and post-cessation receipts),
- (c) income which arises from a source outside the United Kingdom and is chargeable to tax under section 979 of CTA 2009 (charge to tax on income not otherwise charged), and
- (d) any other income or profits which by a provision of this Act is or are—
- (i) chargeable to tax under Chapter 2 of Part 3 of CTA 2009, or
- (ii) calculated in the same way as the profits of a trade;]

but this section shall not apply in relation to income to which section 804C below applies.

[^{F73}(5) In subsection (4) the references—

- (a) to income chargeable under Chapter 15 of Part 3 of CTA 2009, and
- (b) to income chargeable under Chapter 9 of Part 4 of CTA 2009,

do not include income that would, but for the repeal by CTA 2009 of section 103 above, have been chargeable to corporation tax under that section.]]]

Textual Amendments

- F70** S. 798A inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 104](#)
- F71** 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\(1\)](#)
- F72** S. 798A(4)(a)-(d) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [Sch. 1 para. 249\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F73** S. 798A(5) inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [Sch. 1 para. 249\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

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](#)

[^{F74}[^{F75}**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).

Status: Point in time view as at 01/04/2009.

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- (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
 - (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

F74 S. 798B inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 105

F75 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

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[^{F76}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.

[^{F77}(2) The taxpayer's income shall be treated as reduced by the amount of disallowed credit.

(3) Subsection (2) applies only in so far as the amount of disallowed credit does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid.

(4) For the purpose of subsection (3), payment of the foreign tax is to be taken into account despite section 795(2).]]

Textual Amendments

F76 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)

F77 S. 798C(2)-(4) substituted for s. 798C(2) (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 194 (with Sch. 2)

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

Status:

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