



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

- (1) In this Chapter, except where the context otherwise requires—
- “arrangements” means any arrangements having effect by virtue of section 788;
 - “foreign tax” means, in relation to any territory, arrangements with the government of which have effect by virtue of section 788, any tax chargeable under the laws of that territory for which credit may be allowed under the arrangements;
 - “the United Kingdom taxes” means income tax and corporation tax;
 - “underlying tax” means, in relation to any dividend, tax which is not chargeable in respect of that dividend directly or by deduction; and
 - “unilateral relief” means relief under section 790.
- (2) For the purposes of this Chapter one company is a subsidiary of another if the other company controls, directly or indirectly, not less than 50 per cent. of the voting power in the first company.
- (3) Any reference in this Chapter to foreign tax shall be construed in relation to credit to be allowed under any arrangements as a reference only to tax chargeable under the laws of the territory with the government of which the arrangements were made.

Status: This is the original version (as it was originally enacted).

793 Reduction of United Kingdom taxes by amount of credit due

- (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.

794 Requirement as to residence

- (1) Subject to subsection (2) below, credit shall not be allowed under any arrangements against any of the United Kingdom taxes for any chargeable period unless the person in respect of whose income or chargeable gains the United Kingdom tax is chargeable is resident in the United Kingdom for that period.
- (2) Credit may be allowed by way of unilateral relief—
 - (a) for tax paid under the law of the Isle of Man or any of the Channel Islands, if the person in question is, for the chargeable period in question, resident either in the United Kingdom or in the Isle of Man or any of the Channel Islands, as the case may be;
 - (b) for tax paid under the law of any territory and computed by reference to income from an office or employment the duties of which are performed wholly or mainly in that territory, against income tax chargeable under Schedule E and computed by reference to that income, if the person in question is for the year of assessment in question resident either in the United Kingdom or that territory; and
 - (c) for tax paid under the law of any territory in respect of interest on a loan where the following conditions are fulfilled, namely—
 - (i) that the person in question is a company which, for the chargeable period in question, carries on a banking business in the United Kingdom through a branch or agency;
 - (ii) that the loan was made by the company through the branch or agency in the United Kingdom;
 - (iii) that the territory under whose law the tax was paid is not one in which the company is liable to tax by reason of domicile, residence or place of management; and
 - (iv) that the amount of relief claimed does not exceed (or is by the claim expressly limited to) that which would have been available if the branch or agency had been a company resident in the United Kingdom and the loan had been made by it in the course of its banking business.

795 Computation of income subject to foreign tax

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

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

- (2) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income or gain and subsection (1) above does not apply, then, in computing the amount of the income or gain for the purposes of income tax or corporation tax—
 - (a) no deduction shall be made for foreign tax, whether in respect of the same or any other income or gain; and
 - (b) the amount of the income shall, in the case of a dividend, be treated as increased by any underlying tax which, under the arrangements, is to be taken into account in considering whether any and if so what credit is to be allowed in respect of the dividend.
- (3) The amount of any income or gain shall not be treated as increased under this section by reference to any foreign tax which, although not payable, falls to be taken into account for the purposes of section 788(5).

796 Limits on credit: income tax

- (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)—
 - (a) if he were charged to tax on his total income for the year, computed in accordance with section 795; and
 - (b) if he were charged to tax on the same income, computed in the same way, but excluding the income in respect of which the credit is to be allowed.
- (2) Where credit for foreign tax is to be allowed in respect of income from more than one source, subsection (1) above shall be applied successively to the income from each source, but so that on each successive application, paragraph (a) shall apply to the total income exclusive of the income to which the subsection has already been applied.
- (3) Without prejudice to subsections (1) and (2) above, the total credit for foreign tax to be allowed to a person against income tax for any year of assessment under all arrangements having effect by virtue of section 788 shall not exceed the total income tax payable by him for that year of assessment, less any income tax which he is entitled to charge against any other person.

797 Limits on credit: corporation tax

- (1) The amount of the credit for foreign tax which under any arrangements is to be allowed against corporation tax in respect of any income or chargeable gain (“the relevant income or gain”) shall not exceed the corporation tax attributable to the relevant income or gain, determined in accordance with subsections (2) and (3) below.
- (2) Subject to subsection (3) below, the amount of corporation tax attributable to the relevant income or gain shall be treated as equal to such proportion of the amount of that income or gain as corresponds to the rate of corporation tax payable by the company (before any credit under this Part) on its income or chargeable gains for the accounting period in which the income arises or the gain accrues (“the relevant accounting period”).
- (3) Where in the relevant accounting period there is any deduction to be made for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description—

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

- (a) the company may for the purposes of this section allocate the deduction in such amounts and to such of its profits for that period as it thinks fit; and
 - (b) the amount of the relevant income or gain shall be treated for the purposes of subsection (2) above as reduced or, as the case may be, extinguished by so much (if any) of the deduction as is allocated to it.
- (4) Where in accordance with section 239 any advance corporation tax falls to be set against the company's liability to corporation tax on its profits (within the meaning of that section) for the relevant accounting period—
- (a) so far as that liability relates to the relevant income or gain, it shall be taken to be reduced by the amount of the credit for foreign tax attributable to that income or gain, as determined in accordance with subsections (2) and (3) above; and
 - (b) the amount of advance corporation tax which may be set against that liability, so far as it relates to the relevant income or gain, shall not exceed whichever is the lower of the limits specified in subsection (5) below;
- and section 239(2) shall have effect in relation only to so much of the profits of the company chargeable to corporation tax for that period as does not include the relevant income or gain.
- (5) In relation to an amount of income or gain in respect of which the company's liability to corporation tax is taken to be reduced as mentioned in paragraph (a) of subsection (4) above, the limits referred to in paragraph (b) of that subsection are—
- (a) the limit which would apply under section 239(2) if that amount of income or gain were the company's only income or gain for the relevant accounting period; and
 - (b) the amount of corporation tax for which, after taking account of that reduction, the company is liable in respect of that amount of income or gain.

798 Interest on certain overseas loans

- (1) This section applies in a case where—
- (a) in any chargeable period the profits of any person ("the lender") which are brought into charge to income tax or corporation tax include an amount computed in accordance with section 795 in respect of interest ("foreign loan interest") on a loan made to a person resident outside the United Kingdom; and
 - (b) in determining the liability of the lender to income tax or corporation tax, expenditure related to the earning of the foreign loan interest is deductible in computing the profits referred to in paragraph (a) above; and
 - (c) the lender is entitled in accordance with this Chapter to credit for foreign tax chargeable on or by reference to the foreign loan interest;
- and for the purpose only of determining whether the condition in paragraph (b) above is fulfilled in a case where the lender has in fact incurred no expenditure related to the earning of the foreign loan interest, it shall be assumed that he has incurred such expenditure.
- (2) In subsection (1) above "interest", in relation to a loan, includes any introductory or other fee or charge which is payable in accordance with the terms on which the loan is made or is otherwise payable in connection with the making of the loan; and any reference in this section to foreign loan interest shall be construed accordingly.

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

- (3) If in a case where this section applies the foreign tax referred to in subsection (1)(c) above is or includes an amount of spared tax, then for the purposes of income tax or corporation tax the amount which apart from this subsection would be the amount of the foreign loan interest shall be treated as increased by so much of the spared tax as does not exceed the permitted amount, as defined in subsection (4) below; but nothing in this subsection prejudices the operation of section 795 in relation to foreign tax which is not spared tax.
- (4) In this section “spared tax” means foreign tax which although not payable falls to be taken into account for the purposes of credit by virtue of section 788(5); and the permitted amount, in relation to spared tax which is referable to the whole or any part of the foreign loan interest, is an amount which does not exceed—
- (a) 15 per cent. of the interest to which the spared tax is referable, computed without regard to any increase under subsection (3) above; or
 - (b) if it is less, the amount of that spared tax for which, in accordance with any arrangements applicable to the case in question, credit falls to be given as mentioned in subsection (1)(c) above.
- (5) If in a case where this section applies—
- (a) the foreign tax referred to in subsection (1)(c) above is or includes an amount of tax which is not spared tax; and
 - (b) the amount of tax exceeds—
 - (i) the amount of the credit which, by virtue of this Chapter (but disregarding subsection (6) below), is allowed for that foreign tax against income tax or corporation tax; or
 - (ii) if it is less, 15 per cent. of the foreign loan interest, computed without regard to any increase or reduction under this section,then, for the purposes of income tax or corporation tax, the amount which, apart from this subsection, would be the amount of the foreign loan interest shall be treated as reduced by a sum equal to the excess.
- (6) Where this section applies, the amount of the credit for foreign tax referred to in subsection (1)(c) above which, in accordance with this Chapter, is to be allowed against income tax or corporation tax—
- (a) shall be limited by treating the amount of the foreign loan interest (as increased or reduced under subsection (3) or (5) above) as reduced (or further reduced) for the purposes of this Chapter by an amount equal to so much of the lender’s financial expenditure in relation to the loan concerned as is properly attributable to the period for which the interest is paid; and
 - (b) shall not exceed 15 per cent. of the foreign loan interest, computed without regard to paragraph (a) above or to any increase under subsection (3) above or any reduction under subsection (5) above.
- (7) For the purposes of this section the lender’s financial expenditure in relation to a loan is the aggregate of—
- (a) the financial expenses (consisting of interest or similar sums) incurred by the lender in or in connection with the provision of the loan, so far as those expenses consist of payments which either are charges on income for the purposes of corporation tax or are deductible in computing profits of the lender which are brought into charge to income tax or corporation tax; and
 - (b) where the loan is financed by the issue of securities at a discount by the lender, so much of the amount of the discount as either constitutes such a charge

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

- as is mentioned in paragraph (a) above or is deductible as mentioned in that paragraph; and
- (c) so much as it is just and reasonable to attribute to the loan of any interest or other return foregone by a person connected or associated with the lender in connection with the provision of funds to the lender, either interest free or in other circumstances more favourable to the lender than if the parties were at arm's length; and
- (d) any other sum, whether paid by way of refund of tax or interest or by way of commission, which—
- (i) is paid by the lender or a person connected or associated with him;
 - (ii) is paid directly or indirectly to the borrower or a person connected or associated with him;
 - (iii) is deductible as mentioned in paragraph (a) above;
 - (iv) would not, apart from this paragraph, be taken into account in determining the amount of the foreign loan interest; and
 - (v) it is reasonable to regard as referable to the loan or the foreign loan interest (or both).
- (8) In a case where the amount of the lender's financial expenditure in relation to a loan is not readily ascertainable, that amount shall be taken, subject to subsection (9) below, to be such sum as it is just and reasonable to attribute to the financing of the loan, having regard, in particular, to any market rates of interest by reference to which the rate of interest on the loan is determined.
- (9) The Board may by regulations supplement subsection (8) above—
- (a) by specifying matters to be taken into account in determining such a just and reasonable attribution as is referred to in that subsection; and
 - (b) by making provision with respect to the determination of market rates of interest for the purposes of that subsection;
- and any such regulations may make different provision for different cases.
- (10) For the purposes of this section—
- (a) section 839 applies; and
 - (b) subsection (10) of section 783 applies as it applies for the purposes of that section.
- (11) Where the loan on which the foreign loan interest is payable was made pursuant to an agreement entered into before 1st April 1987, this section shall have effect subject to the following modifications in relation to interest payable before 1st April 1989—
- (a) in subsection (1) in paragraph (a) the words "in a territory" shall be inserted after "resident" and the words following paragraph (c) shall be omitted;
 - (b) subsection (2) shall be omitted;
 - (c) in subsection (5) for paragraph (b) there shall be substituted—
 - (b) that amount of tax exceeds the amount of the credit which, by virtue of this Chapter and in particular subsection (6) below, is allowed for that foreign tax against income tax or corporation tax;"and
 - (d) for subsections (6) to (10) there shall be substituted—
 - (6) Where this section applies, the amount of the credit for foreign tax referred to in subsection (1)(c) above which, in accordance with this Chapter, is to be allowed against income tax or corporation tax shall

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

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

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