



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVIII

DOUBLE TAXATION RELIEF

CHAPTER III

MISCELLANEOUS PROVISIONS

807 Sale of securities with or without accrued interest.

^{M1}(1) In any case where—

- (a) a person is treated under section 714(2) as receiving annual profits or gains on the day an interest period ends; and
- (b) assuming that, in the chargeable period in which the day falls, he were to become entitled to any interest on the securities concerned, he would be liable in respect of the interest to tax chargeable under Case IV or V of Schedule D; and
- (c) he is liable under the law of a territory outside the United Kingdom to tax in respect of interest payable on the securities at the end of the interest period or he would be so liable if he were entitled to that interest,

credit of an amount equal to the relevant proportion of the profits or gains shall be allowed against any United Kingdom income tax or corporation tax computed by reference to the profits or gains, and shall be treated as if it were allowed under section 790(4).

In this subsection the relevant proportion is the rate of tax to which the person is or would be liable as mentioned in paragraph (c) above.

(2) In any case where—

- (a) a person is entitled to credit against United Kingdom tax under section 790(4) or any corresponding provision of arrangements under section 788; and

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- (b) the tax is computed by reference to income consisting of interest which falls due on securities at the end of an interest period and which is treated as reduced by virtue of section 714(5);

then the amount of that credit shall be a proportion of the amount it would be apart from this subsection, and the proportion is to be found by applying the formula—

$$\frac{I - R}{I}$$

where—

I is the amount of the interest; and

R is the amount by which it is treated as reduced.

- (3) ^{M2}Where the person entitled to the credit is an individual, subsection (2) above does not apply unless the interest arises from securities to which the person either became or ceased to be entitled during the interest period.

- (4) Where section 811(1) applies to any income and, if credit were allowable in respect of it the credit would be reduced by virtue of subsection (2) above, section 811(1) shall have effect in relation to the income as if the reference to any sum paid in respect of tax on it were a reference to the amount which would be the amount of the credit if it were allowable and subsection (2) above applied.

- (5) Sections 710 and 711 shall apply for the interpretation of this section.

[^{F1}(6) This section does not apply for the purposes of corporation tax.]

Textual Amendments

F1 S. 807(6) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 45 (with Sch. 15)

Marginal Citations

M1 Source—1985 Sch.23 37

M2 Source—1988 Sch.23 38(1)-(3)

[^{F2}807A Disposals and acquisitions of company loan relationships with or without interest.

- (1) This Part shall have effect for the purposes of corporation tax in relation to any company as if tax falling within subsection (2) below were to be disregarded.

- (2) Tax falls within this subsection in relation to a company to the extent that it is—
- (a) tax under the law of a territory outside the United Kingdom; and
 - (b) is attributable, on a just and reasonable apportionment, to interest accruing under a loan relationship at a time when the company is not a party to the relationship.

- (3) Subject to subsections (1), (4) and (5) of this section, where—

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- (a) any non-trading credit relating to an amount of interest under a loan relationship is brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in the case of any company,
 - (b) that amount falls, as a result of any related transaction, to be paid to a person other than the company, and
 - (c) had the company been entitled, at the time of that transaction, to receive a payment of an amount of interest equal to the amount of interest to which the non-trading credit relates, the company would have been liable in respect of the amount of interest received to an amount of tax under the law of a territory outside the United Kingdom,
- credit for that amount of tax shall be allowable under section 790(4) as if that amount of tax were an amount of tax paid under the law of that territory in respect of the amount of interest to which the non-trading credit relates.
- (4) Subsection (3) above does not apply in the case of a credit brought into account in accordance with paragraph 1(2) of Schedule 11 to the Finance Act 1996 (the I minus E basis).
 - (5) The Treasury may by regulations provide for subsection (3) above to apply—
 - (a) in the case of trading credits, as well as in the case of non-trading credits;
 - (b) in the case of any credit (“an insurance credit”) in the case of which, by virtue of subsection (4) above, it would not otherwise apply.
 - (6) Regulations under subsection (5) above may—
 - (a) provide for subsection (3) above to apply in the case of a trading credit or an insurance credit only if the circumstances are such as may be described in the regulations;
 - (b) provide for subsection (3) above to apply, in cases where it applies by virtue of any such regulations, subject to such exceptions, adaptations or other modifications as may be specified in the regulations;
 - (c) make different provision for different cases; and
 - (d) contain such incidental, supplemental, consequential and transitional provision as the Treasury think fit.
 - (7) In this section—

“related transaction” has the same meaning as in section 84 of the Finance Act 1996; and

“trading credit” means any credit falling to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in accordance with section 82(2) of that Act.]

Textual Amendments

- F2** S. 807A inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 46 (with Sch. 15)

808 Restriction on deduction of interest or dividends from trading income.

^{M3}In the case of a person not resident in the United Kingdom who carries on in the United Kingdom [^{F3}a business], receipts of interest [^{F4}, dividend or royalties]

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which have been treated as tax-exempt under arrangements having effect by virtue of section 788 are not to be excluded from trading income or profits of the business so as to give rise to losses to be set off (under section 393 [^{F5}393A(1)] or 436) against income or profits.

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Textual Amendments

- F3** Words in s. 808 substituted (with effect in accordance with s. 140(2) of the amending Act) by Finance Act 1994 (c. 9), s. 140(1)(a)
- F4** Words in s. 808 substituted (with effect in accordance with s. 140(2) of the amending Act) by Finance Act 1994 (c. 9), s. 140(1)(b)
- F5** Words in s. 808 inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), Sch. 15 para.21
- F6** Words in s. 808 repealed (with effect in accordance with s. 140(2) of the repealing Act) by Finance Act 1994 (c. 9), s. 140(1)(c), Sch. 26 Pt. 5(18), Note

Marginal Citations

- M3** Source—1976 s.50(1)

[^{F7}808A Interest: special relationship.

- (1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—
 - (a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and
 - (b) make provision (the special relationship provision) that where owing to a special relationship the amount of the interest paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.
- (2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—
 - (a) the question whether the loan would have been made at all in the absence of the relationship,
 - (b) the amount which the loan would have been in the absence of the relationship, and
 - (c) the rate of interest and other terms which would have been agreed in the absence of the relationship.
- (3) The special relationship provision shall be construed as requiring the taxpayer to show that there is no special relationship or (as the case may be) to show the amount of interest which would have been paid in the absence of the special relationship.
- (4) In a case where—
 - (a) a company makes a loan to another company with which it has a special relationship, and
 - (b) it is not part of the first company's business to make loans generally,
 the fact that it is not part of the first company's business to make loans generally shall be disregarded in construing subsection (2) above.

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- (5) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the debt on which the interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).]

Textual Amendments

- F7** S. 808A inserted (16.7.1992 with application in relation to interest paid after 14.5.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\), s.52](#)

Modifications etc. (not altering text)

- C15** S. 808A(2)-(4) applied (with effect in accordance with s. 97(5)(6) of the affecting Act) by [Finance Act 2004 \(c. 12\), s. 103](#) (with s. 106)
- C16** S. 808A(2)-(4) applied (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 764](#) (with Sch. 2)

VALID FROM 28/07/2000

^{F8}808B Royalties: special relationship.

- (1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—
- make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and
 - make provision (the special relationship provision) that where owing to a special relationship the amount of the royalties paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.
- (2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—
- the question whether the agreement under which the royalties are paid would have been made at all in the absence of the relationship,
 - the rate or amounts of royalties and other terms which would have been agreed in the absence of the relationship, and
 - where subsection (3) below applies, the factors specified in subsection (4) below.
- (3) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—
- the person who is liable to pay the royalties,
 - a person who is, or has at any time been, an associate of the person who is liable to pay the royalties,
 - a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by the person liable to pay those royalties, or
 - a person who is, or has at any time been, an associate of a person who has at any time carried on such a business as is mentioned in paragraph (c) above.

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- (4) The factors mentioned in subsection (2)(c) above are—
- (a) the amounts which were paid under the transaction, or under each of the transactions in the series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,
 - (b) the amounts which would have been so paid in the absence of a special relationship, and
 - (c) the question whether the transaction or series of transactions would have taken place in the absence of such a relationship.
- (5) The special relationship provision shall be construed as requiring the taxpayer to show—
- (a) the absence of any special relationship, or
 - (b) the rate or amount of royalties that would have been payable in the absence of the relationship,
- as the case may be.
- (6) The requirement on the taxpayer to show in accordance with subsection (5)(a) above the absence of any special relationship includes a requirement—
- (a) to show that no person of any of the descriptions in paragraphs (a) to (d) of subsection (3) above has previously been the beneficial owner of the asset in respect of which the royalties are paid, or of any asset which that asset represents or from which it is derived, or
 - (b) to show the matters specified in subsection (7) below,
- as the case may be.
- (7) Those matters are—
- (a) that the transaction or series of transactions mentioned in subsection (4)(a) above would have taken place in the absence of a special relationship, and
 - (b) the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of such a relationship.
- (8) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).
- (9) For the purposes of this section one person (“person A”) is an associate of another person (“person B”) at a given time if—
- (a) person A was, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person B at that time, or
 - (b) the same person was or same persons were, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person A and person B at that time.]

Textual Amendments

- F8** S. 808B inserted (with effect in accordance with [Sch. 30 para. 25\(2\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 30 para. 25\(1\)](#)

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Modifications etc. (not altering text)

- C17** S. 808B(2)-(7)(9) applied (with effect in accordance with s. 97(5)(6) of the affecting Act) by [Finance Act 2004 \(c. 12\)](#), [s. 103](#) (with s. 106)
- C18** S. 808B(2)-(7)(9) applied (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [s. 764](#) (with Sch. 2)

809 Relief in respect of discretionary trusts.

^{M4}(1) In any case where—

- (a) a payment made by trustees falls to be treated as a net amount in accordance with section 687(2) and the income arising under the trust includes any taxed overseas income, and
- (b) the trustees certify that—
 - (i) the income out of which the payment was made was or included taxed overseas income of an amount and from a source stated in the certificate, and
 - (ii) that amount arose to them not earlier than six years before the end of the year of assessment in which the payment was made;

then the person to whom the payment was made may claim that the payment, up to the amount so certified, shall be treated for the purposes of this Part as income received by him from that source and so received in the year in which the payment was made.

- (2) In subsection (1) above “taxed overseas income”, in relation to any trust, means income in respect of which the trustees are entitled to credit for overseas tax under this Part.

Marginal Citations

M4 Source—1973 s.18

810 Postponement of capital allowances to secure double taxation relief.

^{M5}(1) Where—

- (a) a person chargeable to tax under Schedule D in respect of a trade is liable to overseas tax in respect of any income arising from the trade, being overseas tax for which relief may be given by way of credit, repayment or set off under the preceding provisions of this Part, and
- (b) the conditions specified in subsection (2) below are satisfied,

he may, in claiming the relief in respect of that income, claim a postponement under this section of the relevant capital allowances operating to reduce that income for the purposes of tax for any chargeable period.

(2) The conditions are—

- (a) that the law under which the overseas tax is chargeable provides for deductions or allowances to be given corresponding to capital allowances, but on a different basis such that they operate to reduce the income in question (if at all) to a less extent than the capital allowances to which the claim relates, but are calculated to operate to a greater extent than the corresponding capital allowances to reduce income arising subsequently; and

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- (b) that the relief falling to be so given in respect of the income in question is less than it would be if the capital allowances to which the claim relates operated to reduce the income to the same extent only as the deductions or allowances so provided for.
- (3) Where a person claims a postponement under this section of capital allowances for any chargeable period, then—
 - (a) for the purposes of making the assessment for that period, the amount of those allowances shall be reduced by such amount as may be necessary to secure that they operate to reduce the income only to the extent mentioned in subsection (2)(b) above (or such less amount as the claimant may require); and
 - (b) for the purpose of making the assessment for the following period that amount shall be added to the amount of the allowances for that period, and shall be deemed to be part of those allowances or, if there are no such allowances for that period, shall be deemed to be the allowances for that period.
- (4) For the purposes of any claim under this section—
 - (a) there shall be taken into account such only of the relevant capital allowances, and the deductions or allowances operating to reduce the income in question for purposes of the overseas tax, as are calculated to give relief in respect of the same expenditure or the same assets; and
 - (b) no account shall be taken of expenditure . . . ^{F9} incurred on or after 27th October 1970.
- (5) In this section “overseas tax” means tax chargeable under the laws of any territory outside the United Kingdom, and “relevant capital allowances”, in relation to any trade, means capital allowances falling to be made in taxing the trade.
- (6) This section applies (with any necessary adaptations) in relation to a profession, employment, vocation or office, *and in relation to the occupation of woodlands the profits or gains of which are assessable under Schedule D^{F10}*, as it applies in relation to a trade.

Textual Amendments

- F9** *Words repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.*
F10 *Words repealed by 1988(F) s.148 and Sch.14 Part V from 6 April 1993.*

Marginal Citations

- M5** Source—1970 s.515; 1971 s.54(1); 1982 s.78

811 Deduction for foreign tax where no credit allowable.

- ^{M6}(1) For the purposes of the Tax Acts, the amount of any income arising in any place outside the United Kingdom shall, subject to subsection (2) below, be treated as reduced by any sum which has been paid in respect of tax on that income in the place where the income has arisen (that is to say, tax payable under the law of a territory outside the United Kingdom).
- (2) Subsection (1) above—
- (a) shall not apply to income the tax on which is to be computed by reference to the amount of income received in the United Kingdom; and

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- (b) shall not affect section 278(3); ^{F11} . . .
^{F11}(c)

and this section has effect subject to section 795(2).

[^{F12}(3) This section has effect for the purposes of corporation tax notwithstanding anything in 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).]

Textual Amendments

F11 S. 811(2)(c) and preceding word repealed (with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(g)(3)(4), 213, **Sch. 23 Pt. III(9)**

F12 S. 811(3) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 47** (with Sch. 15)

Marginal Citations

M6 Source—1970 s.516; 1973 s.40(1); 1987 Sch.15 2(19)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states.

^{M7}(1) In any case where—

- (a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and
(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under [^{F13}section 2(1) of TIOPA 2010] to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under [^{F14}section 397(2)(a) of ITTOIA 2005] to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made [^{F15}nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where] the credit exceeds that income tax, to have the excess paid to it.

(2) ^{M8}In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [^{F16}in relation to] which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) ^{M9}A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from

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the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

- (4) For the purposes of subsection (3) above—
- (a) [^{F17}7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and]
 - (b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.
- (5) ^{M10}Except where the context otherwise requires, in this section and sections 813 to 815—
- (a) “arrangements” means the arrangements referred to in subsection (1) above;
 - (b) “group” and “member of a group” shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words “ 51 per cent.” for the words “75 per cent.” wherever they occur;
 - ^{F18}(c) whether a person is connected with another is determined in accordance with [^{F19}section 1122 of CTA 2010];]
 - ^{F20}(d) sections 449 to 451 of CTA 2010 apply but with the substitution in section 449 of “6 years” for “12 months”.]
 - (e) “the relevant date” means the earliest of the following dates—
 - (i) the date on which this section comes into force;
 - (ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;
 - (iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.
- (6) ^{M11}The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoing or assets as are mentioned in that subsection—
- (a) if the associated company was incorporated under the law of the territory; or
 - (b) for the purposes of granting relief in taxing dividends received by companies.
- (7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted [^{F21}either the following subsection—
- “(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.”;
- or the following subsections—

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- “(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.
- (4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised.”].
- (8)^{M12}The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.
- (9)^{M13}No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

- F13** Words in s. 812(1)(b) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), **Sch. 8 para. 30** (with Sch. 9)
- F14** Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 326(a)** (with Sch. 2)
- F15** Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 326(b)** (with Sch. 2)
- F16** Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **s. 88(2)(a)**
- F17** S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 20 para. 38(2)**, **Sch. 41 Pt. 5(10)**, Note
- F18** S. 812(5)(c) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **Sch. 1 para. 201** (with Sch. 2)
- F19** Words in s. 812(5)(c) substituted (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **Sch. 1 para. 116(a)** (with Sch. 2)
- F20** S. 812(5)(d) substituted (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **Sch. 1 para. 116(b)** (with Sch. 2)
- F21** Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 20 para. 38(3)**

Marginal Citations

- M7** Source—1985 s.54(1),(3)
- M8** Source—1985 s.54(6) Sch.13 5
- M9** Source—1985 s.54(4),(5)
- M10** Source—1985 s.54(6) Sch.13 5.
- M11** Source—1985 s.54(7)(b), Sch.13 5(1)
- M12** Source—1985 s.54(7)(a)
- M13** Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. **U.K.**

^{M7}(1) In any case where—

Status: Point in time view as at 29/04/1996. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, CHAPTER III is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and
- (b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under section 231(3) to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made or, where the credit exceeds that income tax, to have the excess paid to it.

- (2) ^{M8}In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom with the government of which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.
- (3) ^{M9}A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.
- (4) For the purposes of subsection (3) above—
 - (a) [^{F17}7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and]
 - (b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.
- (5) ^{M10}Except where the context otherwise requires, in this section and sections 813 to 815—
 - (a) “arrangements” means the arrangements referred to in subsection (1) above;
 - (b) “group” and “member of a group” shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words “ 51 per cent. ” for the words “75 per cent.” wherever they occur;
 - (c) section 839 applies;
 - (d) section 416 applies with the substitution of the words “ six years ” for “one year” in subsection (1); and

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- (e) “the relevant date” means the earliest of the following dates—
- (i) the date on which this section comes into force;
 - (ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;
 - (iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.
- (6) ^{M11}The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—
- (a) if the associated company was incorporated under the law of the territory; or
 - (b) for the purposes of granting relief in taxing dividends received by companies.
- (7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted [^{F21}either the following subsection—
- “(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.”;
- or the following subsections—
- “(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.
- (4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised.”].
- (8) ^{M12}The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.
- (9) ^{M13}No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

- F17** S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 38\(2\), Sch. 41 Pt. 5\(10\)](#), Note
- F21** Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 38\(3\)](#)

Marginal Citations

- M7** Source—1985 s.54(1),(3)
- M8** Source—1985 s.54(6) Sch.13 5

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- M9** Source—1985 s.54(4),(5)
M10 Source—1985 s.54(6) Sch.13 5.
M11 Source—1985 s.54(7)(b), Sch.13 5(1)
M12 Source—1985 s.54(7)(a)
M13 Source—1985 s.54(8)

812 **Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.**

^{M7}(1) In any case where—

- (a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and
- (b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under section 231(3) to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made or, where the credit exceeds that income tax, to have the excess paid to it.

(2) ^{M8}In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [^{F16}in relation to] which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) ^{M9}A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

- (a) [^{F17}7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and]
- (b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

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- (5) ^{M10}Except where the context otherwise requires, in this section and sections 813 to 815—
- (a) “arrangements” means the arrangements referred to in subsection (1) above;
 - (b) “group” and “member of a group” shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words “ 51 per cent.” for the words “75 per cent.” wherever they occur;
 - (c) section 839 applies;
 - (d) section 416 applies with the substitution of the words “ six years ” for “one year” in subsection (1); and
 - (e) “the relevant date” means the earliest of the following dates—
 - (i) the date on which this section comes into force;
 - (ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;
 - (iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.
- (6) ^{M11}The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—
- (a) if the associated company was incorporated under the law of the territory; or
 - (b) for the purposes of granting relief in taxing dividends received by companies.
- (7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted [^{F21}either the following subsection—
- “(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.”;
- or the following subsections—
- “(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.
- (4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised.”].
- (8) ^{M12}The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.
- (9) ^{M13}No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

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Textual Amendments

- F16** Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), s. 88(2)(a)
- F17** S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), Sch. 41 Pt. 5(10), Note
- F21** Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(3)

Marginal Citations

- M7** Source—1985 s.54(1),(3)
- M8** Source—1985 s.54(6) Sch.13 5
- M9** Source—1985 s.54(4),(5)
- M10** Source—1985 s.54(6) Sch.13 5.
- M11** Source—1985 s.54(7)(b), Sch.13 5(1)
- M12** Source—1985 s.54(7)(a)
- M13** Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. **U.K.**

^{M7}(1) In any case where—

- (a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and
- (b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under [^{F14}section 397(2)(a) of ITTOIA 2005] to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made [^{F15}nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where] the credit exceeds that income tax, to have the excess paid to it.

- (2) ^{M8}In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [^{F16}in relation to] which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoing or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.
- (3) ^{M9}A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from

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the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

- (4) For the purposes of subsection (3) above—
- (a) [^{F17}7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and]
 - (b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.
- (5) ^{M10}Except where the context otherwise requires, in this section and sections 813 to 815—
- (a) “arrangements” means the arrangements referred to in subsection (1) above;
 - (b) “group” and “member of a group” shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words “ 51 per cent. ” for the words “75 per cent. ” wherever they occur;
 - (c) section 839 applies;
 - (d) section 416 applies with the substitution of the words “ six years ” for “one year” in subsection (1); and
 - (e) “the relevant date” means the earliest of the following dates—
 - (i) the date on which this section comes into force;
 - (ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;
 - (iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.
- (6) ^{M11}The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoing or assets as are mentioned in that subsection—
- (a) if the associated company was incorporated under the law of the territory; or
 - (b) for the purposes of granting relief in taxing dividends received by companies.
- (7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted [^{F21}either the following subsection—
- “(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.”;
- or the following subsections—

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- “(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.
- (4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised.”].
- (8) ^{M12}The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.
- (9) ^{M13}No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

- F14** Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 326\(a\)](#) (with Sch. 2)
- F15** Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 326\(b\)](#) (with Sch. 2)
- F16** Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 88\(2\)\(a\)](#)
- F17** S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 38\(2\), Sch. 41 Pt. 5\(10\)](#), Note
- F21** Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 38\(3\)](#)

Marginal Citations

- M7** Source—1985 s.54(1),(3)
- M8** Source—1985 s.54(6) Sch.13 5
- M9** Source—1985 s.54(4),(5)
- M10** Source—1985 s.54(6) Sch.13 5.
- M11** Source—1985 s.54(7)(b), Sch.13 5(1)
- M12** Source—1985 s.54(7)(a)
- M13** Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. **U.K.**

^{M7}(1) In any case where—

- (a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and
- (b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

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then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under [F14section 397(2)(a) of ITTOIA 2005] to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made [F15nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where] the credit exceeds that income tax, to have the excess paid to it.

- (2) ^{M8}In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [F16in relation to] which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.
- (3) ^{M9}A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.
- (4) For the purposes of subsection (3) above—
- (a) [F177½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and]
 - (b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.
- (5) ^{M10}Except where the context otherwise requires, in this section and sections 813 to 815—
- (a) “arrangements” means the arrangements referred to in subsection (1) above;
 - (b) “group” and “member of a group” shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words “ 51 per cent. ” for the words “75 per cent.” wherever they occur;
 - [F18(c) whether a person is connected with another is determined in accordance with section 839;]
 - (d) section 416 applies with the substitution of the words “ six years ” for “one year” in subsection (1); and
 - (e) “the relevant date” means the earliest of the following dates—
 - (i) the date on which this section comes into force;
 - (ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

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- (iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.
- (6)^{M11}The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoing or assets as are mentioned in that subsection—
- (a) if the associated company was incorporated under the law of the territory; or
 - (b) for the purposes of granting relief in taxing dividends received by companies.
- (7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted [^{F21}either the following subsection—
- “(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.”;
- or the following subsections—
- “(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.
- (4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised.”].
- (8)^{M12}The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.
- (9)^{M13}No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

- F14** Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5)*, **Sch. 1 para. 326(a)** (with Sch. 2)
- F15** Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5)*, **Sch. 1 para. 326(b)** (with Sch. 2)
- F16** Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by *Finance Act 2002 (c. 23)*, **s. 88(2)(a)**
- F17** S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by *Finance Act 1996 (c. 8)*, Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note
- F18** S. 812(5)(c) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by *Income Tax Act 2007 (c. 3)*, **Sch. 1 para. 201** (with Sch. 2)
- F21** Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by *Finance Act 1996 (c. 8)*, **Sch. 20 para. 38(3)**

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Marginal Citations

- M7** Source—1985 s.54(1),(3)
M8 Source—1985 s.54(6) Sch.13 5
M9 Source—1985 s.54(4),(5)
M10 Source—1985 s.54(6) Sch.13 5.
M11 Source—1985 s.54(7)(b), Sch.13 5(1)
M12 Source—1985 s.54(7)(a)
M13 Source—1985 s.54(8)

813 Recovery of tax credits incorrectly paid.

^{M14}(1) Where—

- (a) section 812 applies so as to withdraw the entitlement of a company to claim to have a tax credit in respect of a qualifying distribution set against the income tax chargeable on its income and to have the excess of the credit over that income tax paid to it; and
- (b) the company (“the recipient company”) has either had that excess paid to it, or has received an additional amount in accordance with arrangements made under Regulation 2(1) of the ^{M15}Double Taxation Relief (Taxes on Income) (General) (Dividend) Regulations 1973;

the recipient company shall be liable to a fine for the violation of the provisions of section 812 equal to twice the amount of the excess or the additional amount, as the case may be.

(2) Any fine payable under subsection (1) above—

- (a) shall be payable to the Board;
 - (b) shall be treated as having become payable at the date when the excess or additional amount was paid to the recipient company; and
 - (c) may be recovered in accordance with subsections (3) to (7) below;
- and any such fine is referred to below as “the recoverable amount”.

(3) The recoverable amount may be assessed and recovered as if it were unpaid tax and section 30 of the Management Act (recovery of overpayment of tax etc.) shall apply accordingly.

(4) Any amount which may be assessed and recovered as if it were unpaid tax by virtue of this section shall carry interest at the rate of 9 per cent. per annum from the date when it was payable in accordance with subsection (1) above until the date it is paid.

(5) It is hereby declared that this section applies to a recoverable amount which is paid without the making of an assessment (but is paid after it is due) and that, where the recoverable amount is charged by any assessment (whether or not any part of it has been paid when the assessment is made), this section applies in relation to interest running before, as well as after, the making of the assessment.

(6) Where the recoverable amount is not paid by the recipient company within six months from the date on which it became payable—

- (a) the recoverable amount may at any time within six years from the date on which it became payable be assessed and recovered as if it were unpaid tax due from any person who—
 - (i) is or was at any time prior to the expiration of that six year period connected with the recipient company, or

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(ii) would have been connected on the assumption that all the facts and circumstances relating to the recipient company at the time the excess or additional amount, as the case may be, was paid continued to apply for six years thereafter,

and section 30 of the Management Act shall apply accordingly; and

(b)

^{F22}(7) Where a recoverable amount is assessed and recovered from a person connected with the recipient company in accordance with subsection (6)(a) above, that person shall be liable for the interest payable in accordance with subsection (4) above, and until the interest is so paid, subsection (6)(b) above shall apply as if the words “ the interest due in accordance with subsection (4) above is paid ” were substituted for the words “the recoverable amount is paid in accordance with the provisions of this section”.

(8) Interest payable under this section shall be paid without any deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(9) Where under the law in force in a territory outside the United Kingdom interest is payable subject to a deduction in respect of taxation and such deduction applies to an amount of interest paid in accordance with subsection (4) above, the reference to the rate of 9 per cent. per annum in that subsection shall be deemed to be a reference to such rate of interest as after such deduction shall be equal to the rate of 9 per cent. per annum.

Textual Amendments

F22 S. 813(6)(b) repealed (with effect in accordance with Sch. 3 para. 37(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 37(2), Sch. 27 Pt. 3(2), Note

Modifications etc. (not altering text)

C19 Reproduced in Part III Vol.5.

Marginal Citations

M14 Source—1985 Sch.13 1

M15 S.I. 1973/317.

813 Recovery of tax credits incorrectly paid. **U.K.**

^{M14}(1) Where—

- (a) section 812 applies so as to withdraw the entitlement of a company to claim to have a tax credit in respect of a qualifying distribution set against the income tax chargeable on its income and to have the excess of the credit over that income tax paid to it; and
- (b) the company (“the recipient company”) has either had that excess paid to it, or has received an additional amount in accordance with arrangements made under Regulation 2(1) of the ^{M15}Double Taxation Relief (Taxes on Income) (General) (Dividend) Regulations 1973;

the recipient company shall be liable to a fine for the violation of the provisions of section 812 equal to twice the amount of the excess or the additional amount, as the case may be.

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- (2) Any fine payable under subsection (1) above—
 - (a) shall be payable to the Board;
 - (b) shall be treated as having become payable at the date when the excess or additional amount was paid to the recipient company; and
 - (c) may be recovered in accordance with subsections (3) to (7) below;and any such fine is referred to below as “the recoverable amount”.
- (3) The recoverable amount may be assessed and recovered as if it were unpaid tax and section 30 of the Management Act (recovery of overpayment of tax etc.) shall apply accordingly.
- (4) Any amount which may be assessed and recovered as if it were unpaid tax by virtue of this section shall carry interest at the rate of 9 per cent. per annum from the date when it was payable in accordance with subsection (1) above until the date it is paid.
- (5) It is hereby declared that this section applies to a recoverable amount which is paid without the making of an assessment (but is paid after it is due) and that, where the recoverable amount is charged by any assessment (whether or not any part of it has been paid when the assessment is made), this section applies in relation to interest running before, as well as after, the making of the assessment.
- (6) Where the recoverable amount is not paid by the recipient company within six months from the date on which it became payable—
 - (a) the recoverable amount may at any time within six years from the date on which it became payable be assessed and recovered as if it were unpaid tax due from any person who—
 - (i) is or was at any time prior to the expiration of that six year period connected with the recipient company, or
 - (ii) would have been connected on the assumption that all the facts and circumstances relating to the recipient company at the time the excess or additional amount, as the case may be, was paid continued to apply for six years thereafter,and section 30 of the Management Act shall apply accordingly; and
 - (b) as respects its accounting periods beginning with that in which the excess or additional amount referred to in subsection (1) above was paid and ending with that following that in which the recoverable amount is paid in accordance with the provisions of this section, the company which made the qualifying distribution in respect of which the recipient company received the excess or additional amount shall not be entitled—
 - (i) to set any advance corporation tax paid by it against its liability to corporation tax for such periods in accordance with section 239; nor
 - (ii) to surrender the benefit of the whole or any part of any amount of advance corporation tax to a subsidiary in accordance with section 240 in such periods.
- (7) Where a recoverable amount is assessed and recovered from a person connected with the recipient company in accordance with subsection (6)(a) above, that person shall be liable for the interest payable in accordance with subsection (4) above, and until the interest is so paid, subsection (6)(b) above shall apply as if the words “ the interest due in accordance with subsection (4) above is paid ” were substituted for the words “the recoverable amount is paid in accordance with the provisions of this section”.

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- (8) Interest payable under this section shall be paid without any deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (9) Where under the law in force in a territory outside the United Kingdom interest is payable subject to a deduction in respect of taxation and such deduction applies to an amount of interest paid in accordance with subsection (4) above, the reference to the rate of 9 per cent. per annum in that subsection shall be deemed to be a reference to such rate of interest as after such deduction shall be equal to the rate of 9 per cent. per annum.

Modifications etc. (not altering text)

C19 *Reproduced in Part III Vol.5.*

Marginal Citations

M14 Source—1985 Sch.13 1

M15 *S.I. 1973/317.*

814 Arrangements to avoid section 812.

- ^{M16}(1) In any case where arrangements are made, whether before or after the coming into force of this section, as a result of which interest is paid or a discount is allowed by or through a person who is resident in the United Kingdom, or carries on business in the United Kingdom through a branch or agency, and it is reasonable to suppose that, if such payment or allowance had not been made, a qualifying distribution would have been made by that person, or by another company resident in the United Kingdom to a company which has, or is an associated company of a company which has, a qualifying presence in a unitary state at the time when the payment or allowance is made, then—
- (a) no person who receives that payment or allowance shall be entitled to relief from income tax or corporation tax thereon by virtue of arrangements having effect under [^{F23}section 2(1) of TIOPA 2010]; and
 - (b) the payment or allowance shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (2) Without prejudice to the generality of subsection (1) above, where a payment or allowance is not of itself a payment or allowance to which that subsection applies, but is made in conjunction with other payments of whatever nature and taken together with those payments has substantially similar effect to a distribution, then, for the purposes of subsection (1) above it shall be treated as a payment or allowance within that subsection.
- (3) Any company which has received such a payment of interest as is referred to in subsection (1) above, from which income tax has not been deducted by the person making the payment, and has a qualifying presence in a unitary state at the time of the payment, shall be treated for the purposes of section 813 as a company—
- (a) from which the entitlement to claim payment of the excess of a tax credit over the income tax chargeable on its income has been withdrawn by section 812(1), and
 - (b) which has had paid to it such an excess in an amount equal to the income tax which should have been deducted from the payment of interest.

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Textual Amendments

F23 Words in s. 814(1)(a) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), [Sch. 8 para. 31](#) (with [Sch. 9](#))

Modifications etc. (not altering text)

C20 [S. 814\(1\)](#) modified (with effect in accordance with s. 153(4) of the modifying Act) by [Finance Act 2003 \(c. 14\)](#), [s. 153\(2\)\(a\)](#)

Marginal Citations

M16 Source-1985 Sch. 13 3

814 Arrangements to avoid section 812. **U.K.**

- ^{M16}(1) In any case where arrangements are made, whether before or after the coming into force of this section, as a result of which interest is paid or a discount is allowed by or through a person who is resident in the United Kingdom, or carries on business in the United Kingdom through a branch or agency, and it is reasonable to suppose that, if such payment or allowance had not been made, a qualifying distribution would have been made by that person, or by another company resident in the United Kingdom to a company which has, or is an associated company of a company which has, a qualifying presence in a unitary state at the time when the payment or allowance is made, then—
- (a) no person who receives that payment or allowance shall be entitled to relief from income tax or corporation tax thereon by virtue of arrangements having effect under section 788(1); and
 - (b) the payment or allowance shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (2) Without prejudice to the generality of subsection (1) above, where a payment or allowance is not of itself a payment or allowance to which that subsection applies, but is made in conjunction with other payments of whatever nature and taken together with those payments has substantially similar effect to a distribution, then, for the purposes of subsection (1) above it shall be treated as a payment or allowance within that subsection.
- (3) Any company which has received such a payment of interest as is referred to in subsection (1) above, from which income tax has not been deducted by the person making the payment, and has a qualifying presence in a unitary state at the time of the payment, shall be treated for the purposes of section 813 as a company—
- (a) from which the entitlement to claim payment of the excess of a tax credit over the income tax chargeable on its income has been withdrawn by section 812(1), and
 - (b) which has had paid to it such an excess in an amount equal to the income tax which should have been deducted from the payment of interest.

Modifications etc. (not altering text)

C20 [S. 814\(1\)](#) modified (with effect in accordance with s. 153(4) of the modifying Act) by [Finance Act 2003 \(c. 14\)](#), [s. 153\(2\)\(a\)](#)

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Marginal Citations

M16 Source-1985 Sch. 13 3

815 Power to inspect documents.

^{M17}Where it appears to the Board that the provisions of sections 812 to 814 may apply to a company resident outside the United Kingdom (“the foreign parent”), the Board may, by notice given to the foreign parent or any associated company of the foreign parent, require that company within such time (not being less than 30 days) as may be specified in the notice to make available for inspection any books, accounts or other documents or records whatsoever of that company where in the opinion of the Board it is proper that they should inspect such documents for the purposes of ascertaining whether those provisions apply to the foreign parent or such associated company notwithstanding that in the opinion of the person to whom the notice is given those provisions do not apply to that company or any associated company of that company.

Marginal Citations

M17 Source—1985 Sch.13 4(1)

[^{F24}815A Transfer of a non-UK trade.

(1) This section applies where section 269C of the 1970 Act or section 140C of the Taxation of Chargeable Gains Act 1992 applies; and references in this section to company A, the transfer and the trade shall be construed accordingly.

[^{F25}(2) Where gains accruing to company A on the transfer would have been chargeable to tax under the law of the relevant member State but for the Mergers Directive, this Part, including any arrangements having effect by virtue of section 788, shall apply as if the amount of tax, calculated on the required basis, which would have been payable under that law in respect of the gains so accruing but for that Directive, were tax payable under that law.]

(5) For the purposes of this section, the required basis is that—

- (a) so far as permitted under the law of the relevant member State, any losses arising on the transfer are set against any gains so arising, and
- (b) any relief available to company A under that law has been duly claimed.

(6) In this section—

“the Mergers Directive” means the Directive of the Council of the European Communities dated 23rd July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member States (no. 90/434/EEC);

“relevant member State” means the member State in which, immediately before the time of the transfer, company A carried on the trade through a branch or agency.]

Textual Amendments

F24 S. 815A inserted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s. 50

Status: Point in time view as at 29/04/1996. This version of this chapter contains provisions that are not valid for this point in time.

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F25 S. 815A(2) substituted for s. 815A(2)-(4) (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 39

Modifications etc. (not altering text)

C21 S. 815A applied (*retrospectively*) by Taxation of Chargeable Gains Act 1992 (c. 12), s. 140C(5) (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), s. 45)
S. 815A applied (*retrospectively*) by Income and Corporation Taxes Act 1970 (c. 10), s. 269C(5) (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), s. 48)

VALID FROM 21/07/2008

[^{F26}815AZK residents and foreign enterprises

- (1) Where arrangements having effect under section 788 make the provision mentioned in subsection (2) (however expressed), that provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.
- (2) The provision is that the profits of an enterprise which is resident outside the United Kingdom, or carries on a trade, profession or business the control or management of which is situated outside the United Kingdom, are not to be subject to United Kingdom tax except in so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.
- (3) A person is resident in the United Kingdom for the purposes of this section if the person is so resident for the purposes of the arrangements having effect under section 788.
- (4) This section does not apply in relation to—
 - (a) income of a company resident in the United Kingdom to which section 115(5A) applies, or
 - (b) income of a person resident in the United Kingdom to which section 858 of ITTOIA 2005 applies.]

Textual Amendments

F26 S. 815AZA inserted (with effect in accordance with s. 59(2) of the amending Act) by Finance Act 2008 (c. 9), s. 59(1)

VALID FROM 28/07/2000

[^{F27}815AMutual agreement procedure and presentation of cases under arrangements.

- (1) Where, under and for the purposes of arrangements made with the government of a territory outside the United Kingdom and having effect under section 788—
 - (a) a case is presented to the Board, or to an authority in that territory, by a person concerning his being taxed (whether in the United Kingdom or that territory) otherwise than in accordance with the arrangements; and

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- (b) the Board arrives at a solution to the case or makes a mutual agreement with an authority in that territory for the resolution of the case, subsections (2) and (3) below have effect.
- (2) The Board shall give effect to the solution or mutual agreement, notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise).
- (3) A claim for relief under any provision of the Tax Acts may be made in pursuance of the solution or mutual agreement at any time before the expiration of the period of 12 months following the notification of the solution or mutual agreement to the person affected, notwithstanding the expiration of the time limited by any other enactment for making the claim.
- (4) Where arrangements having effect under section 788 include provision for a person to present a case to the Board concerning his being taxed otherwise than in accordance with the arrangements, subsections (5) and (6) below have effect.
- (5) The presentation of any such case under and in accordance with the arrangements—
- (a) does not constitute a claim for relief under the Tax Acts; and
 - (b) is accordingly not subject to section 42 of the Management Act or any other enactment relating to the making of such claims.
- (6) Any such case must be presented before the expiration of—
- (a) the period of 6 years following the end of the chargeable period to which the case relates; or
 - (b) such longer period as may be specified in the arrangements.]

Textual Amendments

F27 S. 815AA inserted (with effect in accordance with [Sch. 30 para. 28\(2\)\(3\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 30 para. 28\(1\)](#)

[^{F28}815B The Arbitration Convention.

- (1) Subsection (2) below applies if the Arbitration Convention requires the Board to give effect to—
- (a) an agreement or decision, made under the Convention by the Board (or their authorised representative) and any other competent authority, on the elimination of double taxation, or
 - (b) an opinion, delivered by an advisory commission set up under the Convention, on the elimination of double taxation.
- (2) The Board shall give effect to the agreement, decision or opinion notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the making of an assessment or otherwise).

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- (3) Any enactment which limits the time within which claims for relief under any provision of the Tax Acts may be made shall not apply to a claim made in pursuance of an agreement, decision or opinion falling within subsection (1)(a) or (b) above.
- (4) In this section “the Arbitration Convention” means the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23rd July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).]

Textual Amendments

F28 S. 815B inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 51(1)

VALID FROM 28/07/2000

^{F29}815C Exchange of information with other countries.

- (1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been made with the government of any territory outside the United Kingdom with a view to the exchange of information necessary for carrying out—
 - (a) the domestic laws of the United Kingdom concerning income tax, capital gains tax and corporation tax in respect of income and chargeable gains; and
 - (b) the laws of the territory to which the arrangements relate concerning any taxes of a similar character to those taxes imposed by the laws of that territory,and that it is expedient that those arrangements shall have effect, then those arrangements shall have effect notwithstanding anything in any enactment.
- (2) Any Order in Council made under this section revoking an earlier such Order in Council may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.
- (3) An Order under this section shall not be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.]

Textual Amendments

F29 S. 815C inserted (28.7.2000) by Finance Act 2000 (c. 17), s. 146(1)

816 Disclosure of information.

- ^{M18}(1) Where under the law in force in any territory outside the United Kingdom provision is made for the allowance, in respect of the payment of United Kingdom income tax or corporation tax, of relief from tax payable under that law, the obligation as to secrecy imposed by the Tax Acts upon persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the government of the territory in question of such facts as may be necessary to enable the proper relief to be given under that law.

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Section 790(12) shall apply for the interpretation of this subsection as it applies for the interpretation of that section.

- (2) Where any arrangements have effect by virtue of section 788, the obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised officer of the Board, from disclosing to any authorised officer of the government with which the arrangements are made such information as is required to be disclosed under the arrangements.
- [^{F30}(2A) The obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised officer of the Board, from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under that Convention; and “the Arbitration Convention” here has the meaning given by section 815B(4).]
- (3) Where a person beneficially entitled to income from any securities as defined by section 24 of the Management Act (information as to income from securities) is resident in a territory to which arrangements having effect under section 788 with respect to income tax or corporation tax relate, section 24(3) of that Act shall not exempt any bank from the duty of disclosing to the Board particulars relating to the income of that person.
- [^{F31}(3A) In this section “bank” has the meaning given by section 840A.]
- (4) The obligation as to secrecy imposed by any enactments with regard to income tax or corporation tax shall not prevent the disclosure, to any authorised officer of any country to which a declaration made under section 514 of the 1970 Act (agreements about shipping etc.) relates, of such facts as may be necessary to enable relief to be duly given in accordance with the arrangements specified in the declaration.

Textual Amendments

F30 S. 816(2A) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 51(2)

F31 S. 816(3A) inserted (with effect in accordance with Sch. 37 para. 9 of the amending Act) by Finance Act 1996 (c. 8), Sch. 37 para. 2(1)(2)(d)

Modifications etc. (not altering text)

C22 See 1979(C) s.10(4)—application to capital gains tax.

S. 816 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 277(4), 289 (with ss. 60, 101(1), 171, 201(3))

S. 816 applied (27.7.1993) by 1993 c. 34, s. 194(5)

Marginal Citations

M18 Source—1970 s.518; 1972 s.100(1)

Status:

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