



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—

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) [^{F3}Subject to subsection (2A) below,] 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 ^{F4}(i) company is not a party to the relationship [^{F5}; or

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- (ii) to so much of a [^{F6}relevant payment] as, on such an apportionment, is attributable to a time when the company is not a party to [^{F7}the derivative contract concerned]].

[Tax attributable to interest accruing to a company under a loan relationship does not ^{F8}(2A) fall within subsection (2) above if—

- (a) at the time when the interest accrues, that company has ceased to be a party to that relationship by reason of having made the initial transfer under or in accordance with any repo or stock-lending arrangements relating to that relationship; and
- (b) that time falls during the period for which those arrangements have effect.]

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

- (a) any non-trading credit relating to an amount of interest under a loan relationship is brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in the case of any company,
- (b) that amount falls, as a result of any related transaction [^{F9}other than the initial transfer under or in accordance with any repo or stock-lending arrangements relating to that relationship], 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.

[In this section “repo or stock-lending arrangements” has the same meaning as in ^{F10}(6A) paragraph 15 of Schedule 9 to the ^{M3}Finance Act 1996 (repo transactions and stock-lending); and, in relation to any such arrangements—

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- (a) a reference to the initial transfer is a reference to the transfer mentioned in sub-paragraph (3)(a) of that paragraph; and
- (b) a reference to the period for which the arrangements have effect is a reference to the period from the making of the initial transfer until whichever is the earlier of the following—
 - (i) the discharge of the obligations arising by virtue of the entitlement or requirement mentioned in sub-paragraph (3)(b) of that paragraph; and
 - (ii) the time when it becomes apparent that the discharge mentioned in sub-paragraph (i) above will not take place.]

(7) In this section—

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

[^{F11}“relevant payment” means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in a derivative contract, for a period so specified, a rate the value of which at all times is the same as that of a rate of interest so specified;]

[^{F12F13}] 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)
- F3** Words in s. 807A(2) inserted (with effect in accordance with s. 91(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 91(2)**
- F4** Words in s. 807A(2)(b) renumbered as s. 807A(2)(b)(i) (with effect in accordance with Sch. 30 para. 24(4) of the amending Act) by virtue of Finance Act 2000 (c. 17), **Sch. 30 para. 24(2)**
- F5** S. 807A(2)(b)(ii) and preceding word inserted (with effect in accordance with Sch. 30 para. 24(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 24(2)**
- F6** Words in s. 807A(2)(b)(ii) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 12(2)(a)** (with Sch. 28)
- F7** Words in s. 807A(2)(b)(ii) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 12(2)(b)** (with Sch. 28)
- F8** S. 807A(2A) inserted (with effect in accordance with s. 91(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 91(3)**
- F9** Words in s. 807A(3)(b) inserted (with effect in accordance with s. 91(7) of the amending Act) by Finance Act 1997 (c. 16), **s. 91(4)**
- F10** S. 807A(6A) inserted (19.3.1997) by Finance Act 1997 (c. 16), **s. 91(5)**
- F11** S. 807A(7): definition of "relevant payment" inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 12(3)** (with Sch. 28)
- F12** S. 807A(7): definition of "relevant qualifying payment" inserted (with effect in accordance with Sch. 30 para. 24(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 24(3)**
- F13** S. 807A(7): definition of "relevant qualifying payment" repealed (with effect in accordance with s. 83(3) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 27 para. 12(4), **Sch. 40 Pt. 3(13)**, Note (with Sch. 28)

Marginal Citations

- M3** 1996 c. 8.

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

^{M4}In the case of a person not resident in the United Kingdom who carries on in the United Kingdom [^{F14}a business], receipts of interest [^{F15}, dividend or royalties] which have been treated as tax-exempt under arrangements having effect by virtue of section 788 are not to be excluded from trading income or profits of the business so as to give rise to losses to be set off (under section 393 [^{F16}393A(1)] or 436) against income or profits.

^{F17}

Textual Amendments

F14 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\(1\)\(a\)](#)

F15 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\(1\)\(b\)](#)

F16 Words in s. 808 inserted by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 73\(3\)\(4\)\(5\), Sch. 15 para.21](#)

F17 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

M4 Source—1976 s.50(1)

[^{F18}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

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(b) it is not part of the first company's business to make loans generally, the fact that it is not part of the first company's business to make loans generally shall be disregarded in construing subsection (2) above.

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

Textual Amendments

F18 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)

[^{F19}808B Royalties: special relationship.

(1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—

- (a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and
- (b) make provision (the special relationship provision) that where owing to a special relationship the amount of the royalties paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.

(2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—

- (a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the relationship,
- (b) the rate or amounts of royalties and other terms which would have been agreed in the absence of the relationship, and
- (c) where subsection (3) below applies, the factors specified in subsection (4) below.

(3) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—

- (a) the person who is liable to pay the royalties,
- (b) a person who is, or has at any time been, an associate of the person who is liable to pay the royalties,
- (c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by the person liable to pay those royalties, or
- (d) a person who is, or has at any time been, an associate of a person who has at any time carried on such a business as is mentioned in paragraph (c) above.

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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

- F19** 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.

^{M5}(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

M5 Source—1973 s.18

810 Postponement of capital allowances to secure double taxation relief.

^{F20}

Textual Amendments

F20 S. 810 repealed (with effect in accordance with Sch. 30 para. 26(2) of the repealing Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 30 para. 26\(1\)](#), [Sch. 40 Pt. 2\(13\)](#), Note

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—

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- (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; ^{F21} . . .
- (b) shall not affect section 278(3); ^{F22} . . . [^{F23}and]
- ^{F22}(c)
- [^{F24}(d) shall not require any income to be treated as reduced by an amount of underlying tax which, by virtue of section 799(1B)(b), falls to be left out of account for the purposes of section 799;]

and this section has effect subject to section 795(2) [^{F25}and to section 111 of the Finance Act 2004 (computation of income subject to special withholding tax)].

[^{F26}(3) This section has effect for the purposes of corporation tax notwithstanding anything in [^{F27}—

- (a)] section 80(5) of the Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter II of Part IV of that Act) [^{F28}; or
- (b) paragraph 1(3) of Schedule 29 to the Finance Act 2002 (matters to be brought into account in respect of intangible fixed assets only under that Schedule).]

[^{F29}(4) Where the amount by which any income is treated under subsection (1) above as reduced is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either—

- (a) in the United Kingdom, or
- (b) under the law of any other territory,

nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what reduction under subsection (1) above falls to be treated as made.

(5) Subject to subsection (7) below, where—

- (a) the amount of any income of a person is treated under subsection (1) above as reduced by any sum, and
- (b) the amount of that reduction is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom,

that person shall give notice in writing to an officer of the Board that an adjustment has been made that has rendered the amount of the reduction excessive.

(6) A notice under subsection (5) above must be given within one year from the time of the making of the adjustment.

(7) Subsections (5) and (6) above do not apply where the adjustment is one whose consequences in relation to the reduction fall to be given effect to in accordance with regulations made under—

- (a) section 182(1) of the ^{M7}Finance Act 1993 (regulations relating to individual members of Lloyd's); or
- (b) section 229 of the ^{M8}Finance Act 1994 (regulations relating to corporate members of Lloyd's).

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- (8) A person who fails to comply with the requirements imposed on him by subsections (5) and (6) above in relation to any adjustment shall be liable to a penalty of an amount not exceeding the amount of the difference specified in subsection (9) below.
- (9) The difference is that between—
- (a) the amount of tax payable by the person in question for the relevant chargeable period, after giving effect to the reduction that ought to be made under subsection (1) above; and
 - (b) the amount that would have been the tax so payable after giving effect instead to a reduction under that subsection of the amount rendered excessive as mentioned in subsection (5)(b) above.
- (10) For the purposes of subsection (9) above “the relevant chargeable period” means the chargeable period as respects which the reduction was treated as made.]

Textual Amendments

- F21** Word preceding s. 811(2)(b) repealed (with effect in accordance with Sch. 27 para. 6(3) of the repealing Act) by [Finance Act 2001 \(c. 9\)](#), [Sch. 27 para. 6\(2\)\(a\)](#), [Sch. 33 Pt. 2\(8\)](#), Note
- F22** [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\(9\)](#)
- F23** Word at the end of s. 811(2)(b) inserted (with effect in accordance with [Sch. 27 para. 6\(3\)](#) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), [Sch. 27 para. 6\(2\)\(b\)](#)
- F24** [S. 811\(2\)\(d\)](#) inserted (with effect in accordance with [Sch. 27 para. 6\(3\)](#) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), [Sch. 27 para. 6\(2\)\(c\)](#)
- F25** Words in [s. 811\(2\)](#) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 284\(1\)](#), [s. 115\(2\)](#)
- F26** [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](#))
- F27** Words in [s. 811\(3\)](#) renumbered as [s. 811\(3\)\(a\)](#) (24.7.2002) by virtue of [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 5\(5\)](#)
- F28** [S. 811\(3\)\(b\)](#) and preceding word inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 5\(5\)](#)
- F29** [S. 811\(4\)-\(10\)](#) inserted (with effect in accordance with [Sch. 30 para. 27\(3\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 30 para. 27\(2\)](#)

Marginal Citations

- M6** Source—1970 s.516; 1973 s.40(1); 1987 Sch.15 2(19)
- M7** [1993 c. 34](#).
- M8** [1994 c. 9](#).

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

^{M9}(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 [^{F30}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

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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 [F31section 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 [F32nor, 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) M10In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [F33in 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) M11A 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) [F347½ 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) M12Except 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;
- [F35(c) whether a person is connected with another is determined in accordance with [F36section 1122 of CTA 2010];]
- [F37(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;

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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)^{M13}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 [F38 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)^{M14}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)^{M15}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

- F30** 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](#))
- F31** 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](#))
- F32** 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](#))
- F33** 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)**
- F34** 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
- F35** 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](#))

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- F36** 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)
- F37** 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)
- F38** 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

- M9** Source—1985 s.54(1),(3)
- M10** Source—1985 s.54(6) Sch.13 5
- M11** Source—1985 s.54(4),(5)
- M12** Source—1985 s.54(6) Sch.13 5.
- M13** Source—1985 s.54(7)(b), Sch.13 5(1)
- M14** Source—1985 s.54(7)(a)
- M15** Source—1985 s.54(8)

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

^{M9}(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) ^{M10}In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [^{F33}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) ^{M11}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—

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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 15 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) [^{F34}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) ^{M12}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) ^{M13}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 [^{F38}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

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of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised.”].

- (8)^{M14}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)^{M15}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

- F33** 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)
- F34** 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
- F38** 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

- M9** Source—1985 s.54(1),(3)
- M10** Source—1985 s.54(6) Sch.13 5
- M11** Source—1985 s.54(4),(5)
- M12** Source—1985 s.54(6) Sch.13 5.
- M13** Source—1985 s.54(7)(b), Sch.13 5(1)
- M14** Source—1985 s.54(7)(a)
- M15** Source—1985 s.54(8)

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

^{M9}(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 [^{F31}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 [^{F32}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)^{M10}In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [^{F33}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,

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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)^{M11} 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) [F³⁴7½ 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)^{M12} 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)^{M13} 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.

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(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 [^{F38}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) ^{M14}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) ^{M15}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

- F31** 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)
- F32** 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)
- F33** 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\(2\)\(a\)](#)
- F34** [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
- F38** 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

- M9** Source—1985 s.54(1),(3)
- M10** Source—1985 s.54(6) Sch.13 5
- M11** Source—1985 s.54(4),(5)
- M12** Source—1985 s.54(6) Sch.13 5.
- M13** Source—1985 s.54(7)(b), Sch.13 5(1)
- M14** Source—1985 s.54(7)(a)
- M15** Source—1985 s.54(8)

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

^{M9}(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 [^{F31}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 [^{F32}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) ^{M10}In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [^{F33}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) ^{M11}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) [^{F34}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) ^{M12}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;

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- [^{F35}(c) whether a person is connected with another is determined in accordance with section 839;]
- (d) section 416 applies with the substitution of the words “ six years ” for “one year” in subsection (1); and
- (e) “the relevant date” means the earliest of the following dates—
- (i) the date on which this section comes into force;
 - (ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;
 - (iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.
- (6) ^{M13}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 [^{F38}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) ^{M14}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) ^{M15}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

- F31** 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](#))

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- F32** 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)
- F33** 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)**
- F34** 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
- F35** 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)
- F38** 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

- M9** Source—1985 s.54(1),(3)
- M10** Source—1985 s.54(6) Sch.13 5
- M11** Source—1985 s.54(4),(5)
- M12** Source—1985 s.54(6) Sch.13 5.
- M13** Source—1985 s.54(7)(b), Sch.13 5(1)
- M14** Source—1985 s.54(7)(a)
- M15** Source—1985 s.54(8)

813 Recovery of tax credits incorrectly paid.

^{M16}(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 ^{M17}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

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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)

^{F39}(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

F39 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

M16 Source—1985 Sch.13 1

M17 S.I. 1973/317.

814 Arrangements to avoid section 812.

^{M18}(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

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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 [F40 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.

Textual Amendments

F40 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

M18 Source-1985 Sch. 13 3

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

^{M18}(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—

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- (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\(2\)\(a\)](#)

Marginal Citations

M18 Source-1985 Sch. 13 3

815 Power to inspect documents.

^{M19}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

M19 Source—1985 Sch.13 4(1)

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[^{F41}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.

[^{F42}(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 [^{F43}permanent establishment].]

Textual Amendments

F41 S. 815A inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 50

F42 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

F43 Words in s. 815A(6) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)

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

[^{F44}815A ~~UK~~ residents and foreign enterprises

(1) Where arrangements having effect under section 788 make the provision mentioned in subsection (2) (however expressed), that provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.

(2) The provision is that the profits of an enterprise which is resident outside the United Kingdom, or carries on a trade, profession or business the control or management

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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

F44 S. 815AZA inserted (with effect in accordance with s. 59(2) of the amending Act) by Finance Act 2008 (c. 9), s. 59(1)

[^{F45}815A Mutual agreement procedure and presentation of cases under arrangements.

- (1) Where, under and for the purposes of arrangements made [^{F46}in relation to] a territory outside the United Kingdom and having effect under section 788—
 - (a) a case is presented to the Board, or to an authority in that territory, by a person concerning his being taxed (whether in the United Kingdom or that territory) otherwise than in accordance with the arrangements; and
 - (b) the Board arrives at a solution to the case or makes a mutual agreement with an authority in that territory for the resolution of the case,subsections (2) and (3) below have effect.
- (2) The Board shall give effect to the solution or mutual agreement, notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise).
- (3) A claim for relief under any provision of the Tax Acts may be made in pursuance of the solution or mutual agreement at any time before the expiration of the period of 12 months following the notification of the solution or mutual agreement to the person affected, notwithstanding the expiration of the time limited by any other enactment for making the claim.
- (4) Where arrangements having effect under section 788 include provision for a person to present a case to the Board concerning his being taxed otherwise than in accordance with the arrangements, subsections (5) and (6) below have effect.
- (5) The presentation of any such case under and in accordance with the arrangements—
 - (a) does not constitute a claim for relief under the Tax Acts; and
 - (b) is accordingly not subject to section 42 of the Management Act or any other enactment relating to the making of such claims.
- (6) Any such case must be presented before the expiration of—

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- (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

F45 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)**

F46 Words in s. 815AA(1) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

[^{F47}815B The Arbitration Convention.

- (1) Subsection (2) below applies if the Arbitration Convention requires the Board to give effect to—
 - (a) an agreement or decision, made under the Convention by the Board (or their authorised representative) and any other competent authority, on the elimination of double taxation, or
 - (b) an opinion, delivered by an advisory commission set up under the Convention, on the elimination of double taxation.
- (2) The Board shall give effect to the agreement, decision or opinion notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the making of an assessment or otherwise).
- (3) Any enactment which limits the time within which claims for relief under any provision of the Tax Acts may be made shall not apply to a claim made in pursuance of an agreement, decision or opinion falling within subsection (1)(a) or (b) above.
- (4) In this section “the Arbitration Convention” means the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23rd July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).]

Textual Amendments

F47 S. 815B inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 51(1)**

[^{F49}815C Exchange of information with other [^{F48}territories].

- (1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been made [^{F50}in relation to] any territory outside the United Kingdom with a view to the exchange of information [^{F51}foreseeably relevant to the administration or enforcement of]—
 - (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.

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- (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

- F48** Word in s. 815C sidenote substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), s. 88(2)(b)
- F49** S. 815C inserted (28.7.2000) by Finance Act 2000 (c. 17), s. 146(1)
- F50** Words in s. 815C(1) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), s. 88(2)(a)
- F51** Words in s. 815C(1) substituted (10.7.2003) by Finance Act 2003 (c. 14), s. 198(1)(2)

816 Disclosure of information.

^{M20}(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 [^{F52}authorities] of the territory in question of such facts as may be necessary to enable the proper relief to be given under that law.

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

(2) Where any arrangements have effect by virtue of section 788 [^{F53}or 815C], 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 [^{F54}authorities of the territory in relation to] which the arrangements are made such information as is required to be disclosed under the arrangements.

[^{F55}(2ZA) Neither the Board nor an authorised officer of the Board shall disclose any information in pursuance of any arrangements having effect by virtue of section 815C unless satisfied that the [^{F56}authorities of the territory in relation to] which the arrangements are made [^{F56}are bound] by, or [^{F56}have undertaken] to observe, rules of confidentiality with respect to the information which are not less strict than those applying to it in the United Kingdom.]

[^{F57}(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

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exempt any bank from the duty of disclosing to the Board particulars relating to the income of that person.

[^{F58}(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

- F52** Word in s. 816(1) substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 88\(2\)\(c\)](#)
- F53** Words in s. 816(2) inserted (28.7.2000) by [Finance Act 2000 \(c. 17\), s. 146\(2\)](#)
- F54** Words in s. 816(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 88\(2\)\(d\)](#)
- F55** S. 816(2ZA) inserted (28.7.2000) by [Finance Act 2000 \(c. 17\), s. 146\(2\)](#)
- F56** Words in s. 816(2ZA) substituted (with effect in accordance with s. 88(3) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 88\(2\)\(e\)](#)
- F57** S. 816(2A) inserted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\), s. 51\(2\)](#)
- F58** 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

- M20** Source—1970 s.518; 1972 s.100(1)

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