

Status: Point in time view as at 01/02/1991.

Changes to legislation: Income and Corporation Taxes Act 1988, SCHEDULE 26 is up to date with all changes known to be in force on or before 12 June 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)

SCHEDULES

SCHEDULE 26

Section 754(5).

RELIEFS AGAINST LIABILITY FOR TAX IN RESPECT OF CHARGEABLE PROFITS

Trading losses and group relief etc. ^{M1}

Marginal Citations

M1 Source—1984 Sch.18.

- 1 (1) In any case where—
- (a) an amount of chargeable profits is apportioned to a company resident in the United Kingdom, and
 - (b) the company is entitled, or would on the making of a claim be entitled, in computing its profits for the appropriate accounting period, to a deduction in respect of any relevant allowance, and
 - (c) for the appropriate accounting period the company has no profits against which a deduction could be made in respect of that allowance or, as the case may be, the amount of that allowance exceeds the profits against which a deduction falls to be made in respect of it,
- then, on the making of a claim, a sum equal to corporation tax at the appropriate rate on so much of the relevant allowance or, as the case may be, of the excess of it referred to in paragraph (c) above as is specified in the claim shall be set off against the company's liability to tax under section 747(4)(a) in respect of the chargeable profits apportioned to it.
- (2) In this paragraph—
- (a) “the appropriate accounting period” means the accounting period for which, by virtue of section 754(2), the company is regarded as assessed to corporation tax in respect of the chargeable profits concerned; and
 - (b) “the appropriate rate” means the rate of corporation tax applicable to profits of the appropriate accounting period or, if there is more than one such rate, the average rate over the whole accounting period.
- (3) In this paragraph “relevant allowance” means—
- (a) any loss to which section 393(2) applies;
 - (b) any charge on income to which section 338(1) applies;
 - (c) any expenses of management to which section 75(1) applies;
 - (d) so much of any allowance to which section 74 of the 1968 Act applies as falls within subsection (3) of that section; and
 - (e) any amount available to the company by way of group relief.

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- (4) In any case where, for the appropriate accounting period, an amount would have been available to the company by way of group relief if a claim had been made under section 412, such a claim may be made for the purposes of this paragraph at any time before the end of the accounting period following that in which the assessment under section 747(4)(a) is made, notwithstanding that the period of two years referred to in section 412(1)(c) has expired.
- (5) Where, by virtue of sub-paragraph (1) above, a sum is set off against a liability to tax, so much of the relevant allowance as gives rise to the amount set off shall be regarded for the purposes of the Tax Acts as having been allowed as a deduction against the company's profits in accordance with the appropriate provisions of those Acts.
- (6) In its application to a claim under this paragraph, section 43 of the Management Act (time limit for making claims) shall have effect as if, in subsection (2)—
 - (a) any reference to an assessment to income tax were a reference to an assessment under section 747(4)(a); and
 - (b) any reference to a year of assessment were a reference to an accounting period.

Advance corporation tax

- 2 (1) In any case where—
 - (a) an amount of chargeable profits is apportioned to a company resident in the United Kingdom, and
 - (b) the company has an amount of advance corporation tax which, apart from this paragraph, would, in relation to the appropriate accounting period, be surplus advance corporation tax for the purposes of section 239(3),
 then, on the making of a claim, so much of that advance corporation tax as is specified in the claim and does not exceed the relevant maximum shall be set against the company's liability to tax under section 747(4)(a) in respect of the chargeable profits apportioned to it, to the extent that that liability has not or could not have been relieved by virtue of paragraph 1 above.
- (2) So much of any advance corporation tax as, by virtue of this paragraph, is set against the company's liability to tax under section 747(4)(a) in respect of chargeable profits shall be regarded for the purposes of the Tax Acts as not being surplus advance corporation tax within the meaning of section 239.
- (3) In this paragraph "the appropriate accounting period" has the same meaning as in paragraph 1 above and "the relevant maximum", in relation to the liability to tax referred to in sub-paragraph (1) above, is the amount of advance corporation tax that would have been payable (apart from section 241) in respect of a distribution made at the end of the appropriate accounting period of an amount which, together with the advance corporation tax in respect of it, is equal to—
 - (a) that amount of the chargeable profits apportioned to the company on which it is chargeable to corporation tax for that accounting period, less
 - (b) any amount which, for that accounting period, is to be regarded, by virtue of paragraph 1(5) above, as having been allowed as a deduction against the company's profits.

Gains on disposal of shares in controlled foreign companies

- 3 (1) This paragraph applies in any case where—
- (a) a direction has been given under subsection (1) of section 747 in respect of an accounting period of a controlled foreign company (“the direction period”); and
 - (b) the company’s chargeable profits for the direction period have been apportioned among the persons in subsection (3) of that section; and
 - (c) a company resident in the United Kingdom (“the claimant company”) disposes of—
 - (i) shares in the controlled foreign company, or
 - (ii) shares in another company which, in whole or in part, give rise to the claimant company’s interest in the controlled foreign company, being, in either case, shares acquired before the end of the direction period; and
 - (d) by virtue of the apportionment referred to in paragraph (b) above, a sum is, under section 747(4)(a), assessed on and recoverable from the claimant company as if it were an amount of corporation tax; and
 - (e) the claimant company makes a claim for relief under this paragraph;
- and in this paragraph the disposal mentioned in paragraph (c) above is referred to as “the relevant disposal”.
- (2) Subject to the following provisions of this paragraph, in the computation under Chapter II of Part II of the 1979 Act of the gain accruing on the relevant disposal, the appropriate fraction of the sum referred to in sub-paragraph (1)(d) above shall be allowable as a deduction; but to the extent that any sum has been allowed as a deduction under this sub-paragraph it shall not again be allowed as a deduction on any claim under this paragraph (whether made by the claimant company or another company).
- (3) In relation to the relevant disposal, the appropriate fraction is—

$$\frac{A}{B}$$

where—

A is the average market value in the direction period of the shares disposed of, and

B is the average market value in that period of the interest in the controlled foreign company which, in the case of the claimant company, was taken into account in the apportionment referred to in sub-paragraph (1)(b) above.

- (4) Where, before the relevant disposal—
- (a) a dividend is paid by the controlled foreign company, and
 - (b) the profits out of which the dividend is paid are those from which the chargeable profits referred to in sub-paragraph (1)(b) above are derived, and
 - (c) at least one of the two conditions in sub-paragraph (5) below is fulfilled,

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this paragraph does not apply in relation to a sum assessed and recoverable in respect of so much of the chargeable profits as corresponds to the profits which the dividend represents.

- (5) The conditions referred to in sub-paragraph (4) above are—
- (a) that the effect of the payment of the dividend is such that the value of the shares disposed of by the relevant disposal is less after the payment than it was before it; and
 - (b) that, in respect of a dividend paid or payable on the shares disposed of by the relevant disposal, the claimant company is, by virtue of paragraph 4(2) below, entitled under Part XVIII to relief (by way of underlying tax) by reference to sums which include the sum referred to in sub-paragraph (1) (d) above.
- (6) A claim for relief under this paragraph shall be made before the expiry of the period of three months beginning—
- (a) at the end of the accounting period in which the relevant disposal occurs; or
 - (b) if it is later, on the date on which the assessment to tax for which the claimant company is liable by virtue of section 747(4)(a) becomes final and conclusive.
- (7) In identifying for the purposes of this paragraph shares in a company with shares of the same class which are disposed of by the relevant disposal, shares acquired at an earlier time shall be deemed to be disposed of before shares acquired at a later time.

Dividends from the controlled foreign company

- 4 (1) This paragraph applies in any case where—
- (a) a direction has been given under subsection (1) of section 747 in respect of an accounting period of a controlled foreign company, and
 - (b) the company's chargeable profits for that period have been apportioned among the persons referred to in subsection (3) of that section, and
 - (c) the controlled foreign company pays a dividend in whole or in part out of the total profits from which (in accordance with subsection (6)(a) of that section) those chargeable profits are derived.
- (2) Subject to paragraphs 5 and 6 below, where this paragraph applies, the aggregate of the sums assessed on and recoverable from companies resident in the United Kingdom in accordance with section 747(4)(a) in respect of the chargeable profits referred to in sub-paragraph (1)(b) above shall be treated for the purposes of Part XVIII as if it were an amount of tax paid in respect of the profits concerned under the law of the territory in which the controlled foreign company was resident and, accordingly, as underlying tax for the purposes of Chapter II of that Part.
- (3) In the following provisions of this paragraph and in paragraphs 5 and 6 below, the aggregate of the sums which, under sub-paragraph (2) above, fall to be treated as underlying tax is referred to as the "gross attributed tax".
- (4) If, in the case of a person who receives the dividend, section 796 or section 797 has the effect of reducing the amount which (apart from that section) would have been the amount of the credit for foreign tax which is to be allowed to that person, then, for the purposes of sub-paragraph (5) below, the amount of that reduction

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shall be determined and so much of it as does not exceed the amount of the foreign tax, exclusive of underlying tax, for which credit is to be allowed in respect of the dividend is in that sub-paragraph referred to as “the wasted relief”.

- (5) Except for the purpose of determining the amount of the wasted relief, the gross attributed tax shall be treated as reduced by the aggregate of the wasted relief arising in the case of all the persons falling within sub-paragraph (4) above and, on the making of a claim by any of the companies referred to in sub-paragraph (2) above—
- (a) the amount of tax assessed on and recoverable from the company in accordance with section 747(4)(a) in respect of the chargeable profits referred to in sub-paragraph (1) (b) above shall, where appropriate, be reduced; and
 - (b) all such adjustments (whether by repayment of tax or otherwise) shall be made as are appropriate to give effect to any reduction under paragraph (a) above.
- 5 (1) In so far as any provision of—
- (a) arrangements having effect by virtue of section 788, or
 - (b) section 790,
- makes relief which is related to foreign dividends received by a company resident in the United Kingdom conditional upon that company either having a particular degree of control of the company paying the dividend or being a subsidiary of another company which has that degree of control, that condition shall be treated as fulfilled in considering whether any such company is by virtue of paragraph 4(2) above entitled to relief under Part XVIII in respect of any of the gross attributed tax.
- (2) Notwithstanding anything in paragraph 4(2) above, in section 795(2)(b) the expression “underlying tax” does not include gross attributed tax.
- (3) In a case where the controlled foreign company pays a dividend otherwise than out of specified profits and, on the apportionment referred to in paragraph 4(1) above, less than the whole of the chargeable profits of the controlled foreign company concerned is apportioned to companies which are resident in the United Kingdom and liable for tax thereon as mentioned in section 747(4)(a)—
- (a) the gross attributed tax shall be regarded as attributable to a corresponding proportion of the profits in question, and in this sub-paragraph the profits making up that proportion are referred to as “taxed profits”;
 - (b) so much of the dividend as is received by, or by a successor in title of, any such company shall be regarded as paid primarily out of taxed profits; and
 - (c) so much of the dividend as is received by any other person shall be regarded as paid primarily out of profits which are not taxed profits.
- (4) The reference in sub-paragraph (3)(b) above to a successor in title of a company resident in the United Kingdom is a reference to a person who is such a successor in respect of the whole or any part of that interest in the controlled foreign company by virtue of which an amount of its chargeable profits was apportioned to that company.
- 6 (1) In any case where—
- (a) on a claim for relief under paragraph 3 above, the whole or any part of any sum has been allowed as a deduction on a disposal of shares in any company; and

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- (b) that sum forms part of the gross attributed tax in relation to a dividend paid by that company; and
- (c) a person receiving the dividend in respect of the shares referred to in paragraph (a) above (“the primary dividend”) or any other relevant dividend is, by virtue of paragraph 4(2) above, entitled under Part XVIII to relief (by way of underlying tax) by reference to the whole or any part of the gross attributed tax;

the amount which, apart from this paragraph, would be available by way of any such relief to the person referred to in paragraph (c) above shall be reduced or, as the case may be, extinguished by deducting therefrom the amount allowed by way of relief as mentioned in paragraph (a) above.

- (2) For the purposes of sub-paragraph (1)(c) above, in relation to the primary dividend, another dividend is a relevant dividend if—
 - (a) it is a dividend in respect of shares in a company which is resident outside the United Kingdom; and
 - (b) it represents profits which, directly or indirectly, consist of or include the primary dividend.

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