
Status: Point in time view as at 28/07/2000.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Paragraph 21. (See end of Document for details)

SCHEDULES

SCHEDULE 30

DOUBLE TAXATION RELIEF

Foreign dividends: onshore pooling and utilisation of certain unrelieved foreign tax

21 (1) After section 806 of the Taxes Act 1988 insert—

*“ Foreign dividends: onshore pooling and
utilisation of eligible unrelieved foreign tax*

806A Eligible unrelieved foreign tax on dividends: introductory.

- (1) This section applies where, in any accounting period of a company resident in the United Kingdom, an amount of eligible unrelieved foreign tax arises in respect of a dividend falling within subsection (2) below paid to the company.
- (2) The dividends that fall within this subsection are any dividends chargeable under Case V of Schedule D, other than—
 - (a) any dividend which is trading income for the purposes of section 393;
 - (b) any dividend which, in the circumstances described in paragraphs (a) and (b) of subsection (8) of section 393, would by virtue of that subsection fall to be treated as trading income for the purposes of subsection (1) of that section;
 - (c) in a case where section 801A applies, the dividend mentioned in subsection (1)(b) of that section;
 - (d) in a case where section 803 applies, the dividend mentioned in subsection (1)(b) of that section;
 - (e) any dividend the amount of which is, under section 811, treated as reduced.
- (3) For the purposes of this section—
 - (a) the cases where an amount of eligible unrelieved foreign tax arises in respect of a dividend falling within subsection (2) above are the cases set out in subsections (4) and (5) below; and
 - (b) the amounts of eligible unrelieved foreign tax which arise in any such case are those determined in accordance with section 806B.
- (4) Case A is where—
 - (a) the amount of the credit for foreign tax which under any arrangements would, apart from section 797, be allowable against corporation tax in respect of the dividend,

Status: Point in time view as at 28/07/2000.

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exceeds

- (b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of the dividend.
- (5) Case B is where the amount of tax which, by virtue of any provision of any arrangements, falls to be taken into account as mentioned in section 799(1) in the case of the dividend (whether or not by virtue of section 801(2) or (3)) is less than it would be apart from the mixer cap.
- (6) In determining whether the circumstances are as set out in subsection (4) or (5) above, sections 806C and 806D shall be disregarded.

806B The amounts that are eligible unrelieved foreign tax.

- (1) This section has effect for determining the amounts of eligible unrelieved foreign tax which arise in the cases set out in section 806A(4) and (5).
- (2) In Case A, the difference between—
- (a) the amount of the credit allowed as mentioned in section 806A(4) (b), and
 - (b) the greater amount of the credit that would have been so allowed if, for the purposes of subsection (2) of section 797, the rate of corporation tax payable as mentioned in that subsection were the upper percentage,
- shall be an amount of eligible unrelieved foreign tax.
- (3) In Case B, where the mixer cap restricts the amount of tax to be taken into account as mentioned in section 799(1) in the case of the Case V dividend, the difference, in the case of that dividend, between—
- (a) the amount of tax to be taken into account as there mentioned, and
 - (b) the greater amount of tax that would have been taken into account as there mentioned, had M in the formula in section 799(1A) in its application in the case of that dividend (but not any lower level dividend) been the upper percentage,
- shall be an amount of eligible unrelieved foreign tax.
- (4) In Case B, where the mixer cap—
- (a) restricts the amount of underlying tax that is treated as mentioned in subsection (2) or (3) of section 801 in the case of any dividend received as mentioned in that subsection, but
 - (b) does not restrict the relevant tax in the case of any higher level dividend,
- subsection (5) below shall apply.
- (5) Where this subsection applies, an amount equal to the appropriate portion of the difference, in the case of the dividend mentioned in subsection (4)(a) above, between—
- (a) the amount of underlying tax treated as mentioned in section 801(2) or (3), as the case may be, and
 - (b) the greater amount of underlying tax that would have been so treated, had M in the formula in section 799(1A) in its application in the case

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Paragraph 21. (See end of Document for details)

of that dividend (but not any higher or lower level dividend) been the upper percentage,
shall be an amount of eligible unrelieved foreign tax.

- (6) For the purposes of subsection (5) above, the “appropriate portion” of the difference there mentioned in the case of any dividend is found by multiplying the amount of that difference by the product of the reducing fractions for each of the higher level dividends.
- (7) For the purposes of subsection (6) above, the “reducing fraction” for any dividend is the fraction—
- (a) whose numerator is the amount of the dividend; and
 - (b) whose denominator is the amount of the relevant profits (within the meaning of section 799(1)) out of which the dividend is paid.
- (8) Any reference in this section to any tax being restricted by the mixer cap in the case of any dividend is a reference to that tax being so restricted otherwise than by virtue only of the application of the mixer cap in the case of one or more lower level dividends.
- (9) For the purpose of determining the amount described in subsection (2)(b), (3)(b) or (5)(b) above, sections 806C and 806D shall be disregarded.
- (10) In this section—
- “the Case V dividend” means the dividend mentioned in section 806A(1);
 - “higher level dividend”, in relation to another dividend, means any dividend—
 - (a) by which that other dividend is to any extent represented; and
 - (b) which either is the Case V dividend or is to any extent represented by the Case V dividend;
 - “lower level dividend”, in relation to another dividend, means any dividend which—
 - (a) is received as mentioned in section 801(2) or (3); and
 - (b) is to any extent represented by that other dividend;
 - “the relevant tax” means—
 - (a) in the case of the Case V dividend, the foreign tax to be taken into account as mentioned in section 799(1); and
 - (b) in the case of any other dividend, the amount of underlying tax to be treated as mentioned in section 801(2) or (3) in the case of the dividend.

806C Onshore pooling.

- (1) In this section “qualifying foreign dividend” means any dividend which falls within section 806A(2), other than—
- (a) an ADP dividend paid by a controlled foreign company;
 - (b) so much of any dividend paid by any company as represents an ADP dividend paid by another company which is a controlled foreign company;
 - (c) a dividend in respect of which an amount of eligible unrelieved foreign tax arises.

Status: Point in time view as at 28/07/2000.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Paragraph 21. (See end of Document for details)

- (2) For the purposes of this section—
- (a) a “related qualifying foreign dividend” is any qualifying foreign dividend paid to a company resident in the United Kingdom by a company which, at the time of payment of the dividend, is related to that company;
 - (b) an “unrelated qualifying foreign dividend” is any qualifying foreign dividend which is not a related qualifying foreign dividend.
- (3) For the purposes of giving credit relief under this Part to a company resident in the United Kingdom—
- (a) the related qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;
 - (b) the unrelated qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;
 - (c) the underlying tax in relation to the related qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;
 - (d) so much of the foreign tax paid in respect of the qualifying foreign dividends that arise to the company in an accounting period as is not underlying tax shall be aggregated.
- (4) Credit relief under this Part shall be given as if—
- (a) the related qualifying foreign dividends aggregated under paragraph (a) of subsection (3) above in the case of any accounting period instead together constituted a single related qualifying foreign dividend arising in that accounting period (“the single related dividend” arising in that accounting period);
 - (b) the unrelated qualifying foreign dividends aggregated under paragraph (b) of that subsection in the case of any accounting period instead together constituted a single unrelated qualifying foreign dividend arising in that accounting period (“the single unrelated dividend” arising in that accounting period);
 - (c) the underlying tax aggregated under paragraph (c) of that subsection for any accounting period were instead underlying tax in relation to the single related dividend arising in that accounting period (the “aggregated underlying tax” in respect of the single related dividend);
 - (d) the tax aggregated under paragraph (d) of that subsection for any accounting period were instead foreign tax (other than underlying tax) paid in respect of, and computed by reference to,—
 - (i) the single related dividend arising in that accounting period,
 - (ii) the single unrelated dividend so arising, or
 - (iii) partly the one dividend and partly the other,
 (that aggregated tax being referred to as the “aggregated withholding tax”).
- (5) For the purposes of this section, a dividend paid by a controlled foreign company is an “ADP dividend” if it is a dividend by virtue of which (whether in whole or in part and whether taken alone or with one or more other dividends) no apportionment under section 747(3) falls to be made as regards

Status: Point in time view as at 28/07/2000.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Paragraph 21. (See end of Document for details)

an accounting period of the controlled foreign company in a case where such an apportionment would fall to be made apart from section 748(1)(a).

806D Utilisation of eligible unrelieved foreign tax.

- (1) For the purposes of this section, where—
 - (a) any eligible unrelieved foreign tax arises in an accounting period of a company, and
 - (b) the dividend in relation to which it arises is paid by a company which, at the time of payment of the dividend, is related to that company,that tax is “eligible underlying tax” to the extent that it consists of or represents underlying tax.
- (2) To the extent that any eligible unrelieved foreign tax is not eligible underlying tax it is for the purposes of this section “eligible withholding tax”.
- (3) For the purposes of giving credit relief under this Part to a company resident in the United Kingdom—
 - (a) the amounts of eligible underlying tax that arise in an accounting period of the company shall be aggregated (that aggregate being referred to as the “relievable underlying tax” arising in that accounting period); and
 - (b) the amounts of eligible withholding tax that arise in an accounting period of the company shall be aggregated (that aggregate being referred to as the “relievable withholding tax” arising in that accounting period).
- (4) The relievable underlying tax arising in an accounting period of the company shall be treated for the purposes of allowing credit relief under this Part as if it were—
 - (a) underlying tax in relation to the single related dividend that arises in the same accounting period,
 - (b) relievable underlying tax arising in the next accounting period (whether or not any related qualifying foreign dividend in fact arises to the company in that accounting period), or
 - (c) underlying tax in relation to the single related dividend that arises in such one or more preceding accounting periods as result from applying the rules in section 806E,or partly in one of those ways and partly in each or either of the others.
- (5) The relievable withholding tax arising in an accounting period of the company shall be treated for the purposes of allowing credit relief under this Part as if it were—
 - (a) foreign tax (other than underlying tax) paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend that arises in the same accounting period,
 - (b) relievable withholding tax arising in the next accounting period (whether or not any qualifying foreign dividend in fact arises to the company in that accounting period), or
 - (c) foreign tax (other than underlying tax) paid in respect of, and computed by reference to, the single related dividend or the single

Status: Point in time view as at 28/07/2000.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Paragraph 21. (See end of Document for details)

unrelated dividend that arises in such one or more preceding accounting periods as result from applying the rules in section 806E, or partly in one of those ways and partly in any one or more of the others.

- (6) The amount of relievable underlying tax or relievable withholding tax arising in an accounting period that is treated—
- (a) under subsection (4)(a) or (c) above as underlying tax in relation to the single related dividend arising in the same or any earlier accounting period, or
 - (b) under subsection (5)(a) or (c) above as foreign tax paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend arising in the same or any earlier accounting period,

must not be such as would cause an amount of eligible unrelieved foreign tax to arise in respect of that dividend.

806E Rules for carry back of relievable tax under section 806D.

- (1) Where any relievable tax is to be treated as mentioned in section 806D(4)(c) or (5)(c), the rules for determining the accounting periods in question (and the amount of the relievable tax to be so treated in relation to each of them) are those set out in the following provisions of this section.
- (2) Rule 1 is that the accounting periods in question must be accounting periods beginning not more than three years before the accounting period in which the relievable tax arises.
- (3) Rule 2 is that the relievable tax must be so treated that—
 - (a) credit for, or for any remaining balance of, the relievable tax is allowed against corporation tax in respect of the single dividend arising in a later one of the accounting periods beginning as mentioned in rule 1 above,

before
 - (b) credit for any of the relievable tax is allowed against corporation tax in respect of the single dividend arising in any earlier such accounting period.
- (4) Rule 3 is that the relievable tax must be so treated that, before allowing credit for any of the relievable tax against corporation tax in respect of the single dividend arising in any accounting period, credit for foreign tax is allowed—
 - (a) first for the aggregated foreign tax in respect of the single dividend arising in that accounting period, so far as not consisting of relievable tax arising in another accounting period; and
 - (b) then for relievable tax arising in any accounting period before that in which the relievable tax in question arises.
- (5) The above rules are subject to sections 806D(6) and 806F.
- (6) In this section—
“aggregated foreign tax” means aggregated underlying tax or aggregated withholding tax;

Status: Point in time view as at 28/07/2000.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Paragraph 21. (See end of Document for details)

“relievable tax” means relievable underlying tax or relievable withholding tax;

“the single dividend” means—

- (a) in relation to relievable underlying tax, the single related dividend; and
- (b) in relation to relievable withholding tax, the single related dividend or the single unrelated dividend.

806F Credit to be given for underlying tax before other foreign tax etc.

- (1) For the purposes of this Part, credit in accordance with any arrangements shall, in the case of any dividend, be given so far as possible—
 - (a) for underlying tax (where allowable) before foreign tax other than underlying tax;
 - (b) for foreign tax other than underlying tax before amounts treated as underlying tax; and
 - (c) for amounts treated as underlying tax (where allowable) before amounts treated as foreign tax other than underlying tax.
- (2) Accordingly, where the amount of foreign tax to be brought into account for the purposes of allowing credit relief under this Part is subject to any limitation or restriction, the limitation or restriction shall be taken to have the effect of excluding foreign tax other than underlying tax before excluding underlying tax.

806G Claims for the purposes of section 806D(4) or (5).

- (1) The relievable underlying tax or relievable withholding tax arising in any accounting period shall only be treated as mentioned in subsection (4) or (5) of section 806D on a claim.
- (2) Any such claim must specify the amount (if any) of that tax—
 - (a) which is to be treated as mentioned in paragraph (a) of the subsection in question;
 - (b) which is to be treated as mentioned in paragraph (b) of that subsection; and
 - (c) which is to be treated as mentioned in paragraph (c) of that subsection.
- (3) A claim under subsection (1) above may only be made before the expiration of the period of—
 - (a) six years after the end of the accounting period mentioned in that subsection; or
 - (b) if later, one year after the end of the accounting period in which the foreign tax in question is paid.

806H Surrender of relievable tax by one company in a group to another.

- (1) The Board may by regulations make provision for, or in connection with, allowing a company which is a member of a group to surrender all or any part of the amount of the relievable tax arising to it in an accounting period to

Status: Point in time view as at 28/07/2000.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Paragraph 21. (See end of Document for details)

another company which is a member of that group at the time, or throughout the period, prescribed by the regulations.

- (2) The provision that may be made under subsection (1) above includes provision—
- (a) prescribing the conditions which must be satisfied if a surrender is to be made;
 - (b) determining the amount of relievable tax which may be surrendered in any accounting period;
 - (c) prescribing the conditions which must be satisfied if a claim to surrender is to be made;
 - (d) prescribing the consequences for tax purposes of a surrender having been made;
 - (e) allowing a claim to be withdrawn and prescribing the effect of such a withdrawal.
- (3) Regulations under subsection (1) above—
- (a) may make different provision for different cases; and
 - (b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.
- (4) For the purposes of subsection (1) above a company is a member of a group if the conditions prescribed for that purpose in the regulations are satisfied.

806J Interpretation of foreign dividend provisions of this Chapter.

- (1) This section has effect for the interpretation of the foreign dividend provisions of this Chapter.
- (2) In this section, “the foreign dividend provisions of this Chapter” means sections 806A to 806H and this section.
- (3) For the purposes of the foreign dividend provisions of this Chapter, where—
- (a) one company pays a dividend (“dividend A”) to another company, and
 - (b) that other company, or a company which is related to it, pays a dividend (“dividend B”) to another company,
- dividend B represents dividend A, and dividend A is represented by dividend B, to the extent that dividend B is paid out of profits which are derived, directly or indirectly, from the whole or part of dividend A.
- (4) Where—
- (a) one company is related to another, and
 - (b) that other is related to a third company,
- the first company shall be taken for the purposes of paragraph (b) of subsection (3) above to be related to the third, and so on where there is a chain of companies, each of which is related to the next.
- (5) In any case where—
- (a) a company resident outside the United Kingdom pays a dividend to a company resident in the United Kingdom, and

Status: Point in time view as at 28/07/2000.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Paragraph 21. (See end of Document for details)

- (b) the circumstances are such that subsection (6)(b) of section 790 has effect in relation to that dividend,
the foreign dividend provisions of this Chapter shall have effect as if the company resident outside the United Kingdom were related to the company resident in the United Kingdom (and subsection (10) of that section shall have effect accordingly).
- (6) Subsection (5) of section 801 (related companies) shall apply for the purposes of the foreign dividend provisions of this Chapter as it applies for the purposes of that section.
- (7) In the foreign dividend provisions of this Chapter—
- “aggregated underlying tax” shall be construed in accordance with section 806C(4)(c);
 - “aggregated withholding tax” shall be construed in accordance with section 806C(4)(d);
 - “controlled foreign company” has the same meaning as in Chapter IV of Part XVII;
 - “eligible unrelieved foreign tax” shall be construed in accordance with sections 806A and 806B;
 - “the mixer cap” means section 799(1)(b);
 - “qualifying foreign dividend” has the meaning given by section 806C(1);
 - “related qualifying foreign dividend” has the meaning given by section 806C(2)(a);
 - “relievable tax” has the meaning given by section 806E(6);
 - “relievable underlying tax” shall be construed in accordance with 806D(3)(a);
 - “relievable withholding tax” shall be construed in accordance with 806D(3)(b);
 - “single related dividend” shall be construed in accordance with section 806C(4)(a);
 - “single unrelated dividend” shall be construed in accordance with section 806C(4)(b);
 - “the upper percentage” is 45 per cent.”
- (2) The amendments made by sub-paragraph (1) have effect in relation to—
- (a) dividends arising on or after 31st March 2001, and
 - (b) foreign tax in respect of such dividends,
- (and accordingly the single related dividend or the single unrelated dividend which falls to be treated under those amendments as arising in any accounting period of a company shall not include any dividend arising on or before 30th March 2001).

Status:

Point in time view as at 28/07/2000.

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