



Finance Act 2004

2004 CHAPTER 12

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 6

EXEMPTION FROM INCOME TAX FOR CERTAIN INTEREST AND ROYALTY PAYMENTS

Special relationships and anti-avoidance

103 Special relationships

- (1) In any case where—
- (a) apart from this section, section 98 would apply in relation to a payment of interest or of a royalty,
 - (b) at the time the payment is made, there is a special relationship (within the meaning of Article 4(2) of the Directive) between the company in Condition 1 of section 98 and the company in Condition 2 of that section or between one of those companies and another person, and
 - (c) owing to the special relationship, the amount of the interest or royalty paid exceeds the amount (“the arm’s length amount”) which would have been paid in the absence of the relationship,

this Chapter, apart from this section, has effect in relation to only so much of the payment as does not exceed the arm’s length amount (which may be nil).

- (2) The following provisions of the Taxes Act 1988 apply in relation to subsection (1) as if that subsection were a special relationship provision within the meaning of those provisions—
- (a) in the case of a payment of interest, subsections (2) to (4) of section 808A (interest: special relationship), and

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Special relationships and anti-avoidance. (See end of Document for details)

- (b) in the case of a payment of a royalty, subsections (2) to (7) and (9) of section 808B (royalties: special relationship).
- (3) In those provisions of the Taxes Act 1988 as applied in relation to subsection (1), expressions also used in this section or this Chapter have the same meaning as in this section or this Chapter.
- (4) This section does not affect any relief which may be allowed under any arrangements having effect by virtue of section 788 of the Taxes Act 1988 (double taxation relief by agreement with other territories).

104 Anti-avoidance

- (1) Section 98 does not apply in relation to a payment of interest or of a royalty if—
 - (a) in the case of a payment of interest, Condition A is satisfied, or
 - (b) in the case of a payment of a royalty, Condition B is satisfied.
- (2) Condition A is satisfied if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Chapter by means of that creation or assignment.
- (3) Condition B is satisfied if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the right in respect of which the royalty is paid to take advantage of this Chapter by means of that creation or assignment.

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