



# Finance (No. 2) Act 2005

## 2005 CHAPTER 22

### PART 2

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 4

#### AVOIDANCE INVOLVING TAX ARBITRAGE

#### **25 Rules relating to deductions**

- (1) The following provisions of this section apply in relation to a transaction if—
  - (a) a notice specifying the transaction is given to a company under section 24, and
  - (b) when the notice is given, conditions A to D of section 24 are satisfied in relation to the transaction.
- (2) The company must compute (or recompute) for the purposes of corporation tax its income or chargeable gains, or its liability to corporation tax—
  - (a) for the accounting period specified in the notice under section 24, and
  - (b) for any subsequent accounting period,in accordance with rules A and B.
- (3) Rule A is that, in respect of the specified transaction, no amount is allowable as a deduction for the purposes of the Corporation Tax Acts to the extent that, in relation to the expense in question, an amount may be otherwise deducted or allowed in computing the income, profits or losses of any person for the purposes of any tax (including any foreign tax) other than—
  - (a) petroleum revenue tax, or
  - (b) the tax chargeable under section 501A(1) of ICTA (supplementary charge in respect of ring fence trades).
- (4) The reference in subsection (3) to an amount otherwise deducted or allowed in computing the income, profits or losses of any person for the purposes there mentioned

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*Status: Point in time view as at 20/07/2005. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Section 25. (See end of Document for details)*

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includes a reference to an amount that would be so deducted or allowed but for any rule that has the same effect as rule A.

- (5) For the purposes of subsection (4) “rule” means—
- (a) a provision of the Tax Acts, or
  - (b) a rule having effect under the tax law of any territory outside the United Kingdom.
- (6) Rule B applies if—
- (a) a transaction, or a series of transactions, forming part of the scheme by reference to which conditions A to D are satisfied makes or imposes provision as a result of which one person (“the payer”) makes a payment and another person (“the payee”) receives, or becomes entitled to receive, a payment or payments,
  - (b) in respect of the payment by the payer, an amount may be deducted or otherwise allowed to the payer, or to another person who is party to, or concerned in, the scheme, in computing any profits or losses for tax purposes, and
  - (c) in respect of the payment or payments that the payee receives or is entitled to receive as a result of the transaction or series of transactions, or part of such payment or payments, the payee is not liable to tax or, if liable, his liability to tax is reduced as a result of provision made or imposed by the scheme.
- (7) Without prejudice to the generality of subsection (6)(c), the payee's liability to tax in respect of the payment or payments that he receives or is entitled to receive as a result of the transaction or series of transactions shall be treated for the purposes of subsection (6)(c) as reduced as a result of provision made or imposed by the scheme if—
- (a) an amount arising from the transaction or series of transactions forming part of the scheme, or from another transaction or series of transactions forming part of the scheme, falls to be deducted or otherwise allowed to the payee in computing for tax purposes any profits or losses arising from the payment or payments or the entitlement to receive the payment or payments, or
  - (b) an amount of relief arising from the transaction or series of transactions forming part of the scheme, or from another transaction or series of transactions forming part of the scheme, may be deducted from the amount of income or gains arising from the payment or payments or the entitlement to receive the payment or payments.
- (8) The requirement in subsection (6)(c) is not satisfied if the payee is not liable to tax because he is not liable to tax on any income or gains received by him or for his benefit under the tax law of any territory.
- (9) The requirement in subsection (6)(c) is not satisfied if, or to the extent that, the payee is not subject to tax because his liability to tax is subject to an exemption falling within subsection (10).
- (10) An exemption falls within this subsection if—
- (a) it exempts a person from being liable to tax in respect of income or gains, without providing for that income or those gains to be treated as the income or gains of one or more other persons, and
  - (b) it is conferred by a provision contained in or having the force of an Act or by a provision of the tax law of any territory outside the United Kingdom.

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- (11) Rule B is that the aggregate of the amounts allowable as a deduction for the purposes of the Corporation Tax Acts in computing any profits to the company arising from—
- (a) the specified transaction, and
  - (b) any other transaction that forms part of the scheme and to which the company is party,
- is to be reduced in accordance with subsections (12) and (13).
- (12) If, in respect of the payment or payments that the payee receives or is entitled to receive, the payee is not liable to tax for the purposes of the requirement in subsection (6)(c), the aggregate is to be reduced to nil.
- (13) If, in respect of the payment or payments, the payee is liable to tax as regards part or his liability to tax is reduced as described in subsection (6)(c), the aggregate is to be reduced to such proportion of the aggregate as is equal to the proportion of the payment or payments on which the payee is liable to tax; and for this purpose the amount by which the payee's liability is reduced is to be treated as an amount on which the payee is not liable to tax.
- (14) The company may choose to incorporate in its company tax return for the specified accounting period such relevant adjustments as are necessary for counteracting those effects of the scheme that are referable to the purpose referred to in condition C.
- (15) If, as a consequence of incorporating relevant adjustments in that company tax return, the company counteracts those effects of the scheme that are referable to the purpose referred to in condition C, the company is to be treated, so far as regards the scheme, as having complied with subsection (2).
- (16) The following are relevant adjustments—
- (a) treating all or part of a deduction allowable for corporation tax purposes as not being allowable;
  - (b) treating all or part of an amount that for corporation tax purposes may be set off against profits in an accounting period as not falling to be set off.
- (17) In this section, references to tax purposes include a reference to the purposes of any foreign tax; and foreign tax has the meaning given by section 403D of ICTA.
- (18) In this section, “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule.

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