# Income Tax (Trading and Other Income) Act 2005

**2005 CHAPTER 5**

## PART 4

SAVINGS AND INVESTMENT INCOME

## CHAPTER 3

DIVIDENDS ETC. FROM UK RESIDENT COMPANIES [F1 AND TAX CREDITS ETC. IN RESPECT OF CERTAIN DISTRIBUTIONS]

**Textual Amendments**

**F1** Words in Pt. 4 Ch. 3 heading substituted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 2**

*Introduction*

### 382 Contents of Chapter

(1) This Chapter—

(a) imposes a charge to income tax on dividends and other distributions of UK resident companies (see section 383),

(b) treats dividends as paid in some circumstances (see sections 386 to 391), and

(c) makes special provision where the charge is in respect of shares awarded under an approved share incentive plan (see sections 392 to 396).

(2) This Chapter also makes provision about tax credits, tax being treated as paid and reliefs available in respect of certain distributions which applies whether or not the distributions are otherwise dealt with under this Chapter (see sections 397 to 401).

(3) For exemptions from the charge under this Chapter, see in particular—

Chapter 3 of Part 6 (income from individual investment plans),

Chapter 5 of that Part (venture capital trust dividends),

section 770 (amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment), and

section 498 of ITEPA 2003 (no charge on shares ceasing to be subject to SIP in certain circumstances).

(4) In this Chapter "dividends" does not include income treated as arising under section 410 (stock dividends).

*Charge to tax on dividends and other distributions*

### 383 Charge to tax on dividends and other distributions

(1) Income tax is charged on dividends and other distributions of a UK resident company.

(2) For income tax purposes such dividends and other distributions are to be treated as income.

(3) For the purposes of subsection (2), it does not matter that those dividends and other distributions are capital apart from that subsection.

### 384 Income charged

(1) Tax is charged under this Chapter on the amount or value of the dividends paid and other distributions made in the tax year.

(2) Subsection (1) is subject to—

section 393(2) and (3) (later charge where cash dividends retained in SIPs are paid over), and

section 394(3) (distribution when dividend shares cease to be subject to SIP).

(3) See also section 398 (under which the amount or value of the dividends or other distributions is treated as increased if any person is entitled to a tax credit in respect of them).

### 385 Person liable

(1) The person liable for any tax charged under this Chapter is—

(a) the person to whom the distribution is made or is treated as made (see Part 6 of ICTA and sections 386(3) and 389(3)), or

(b) the person receiving or entitled to the distribution.

(2) Subsection (1) is subject to—

section 393(4) (later charge where cash dividends retained in SIPs are paid over), and

section 394(4) (distribution when dividend shares cease to be subject to SIP).

*Amounts treated as dividends*

### 386 Open-ended investment company dividend distributions

(1) This section applies if the distribution accounts of an open-ended investment company show the total amount available for distribution to owners of shares in the company as available for distribution as dividends.

(2) Subsection (1) is subject to subsection (5).

(3) For income tax purposes dividends are treated as paid to the owners of the shares by the company.

(4) The amount of the dividends treated as paid to each owner is so much of the total amount mentioned in subsection (1) as is proportionate to the owner's shares.

(5) This section does not apply if the open-ended investment company is an approved personal pension scheme.

(6) See section 388 for the interpretation of this section and section 387.

### 387 Date when dividends paid under section 386

(1) This section applies for determining the date on which dividends are treated as paid under section 386.

(2) The date on which the dividends are treated as paid depends on whether a date is specified for the distribution period in question by or in accordance with—

(a) the company's instrument of incorporation and its prospectus in issue for the time being (including any supplements), or

(b) in the case of an open-ended investment company which is part of an umbrella company, such parts of those documents of the umbrella company as apply to the open-ended investment company.

(3) If such a date is so specified, the dividends are treated as paid on that date.

(4) If no such date is so specified, the dividends are treated as paid on the last day of that period.

### 388 Interpretation of sections 386 and 387

(1) In sections 386 and 387 and this section—

"approved personal pension scheme" has the same meaning as in Chapter 4 of Part 14 of ICTA (see section 630(1) of that Act),

"distribution" includes investment on behalf of an owner of shares in respect of the owner's accumulation shares,

"distribution accounts" means the accounts showing how the total amount available for distribution to owners of shares is calculated,

"distribution period" means the period by reference to which that amount is ascertained,

"the OEIC Regulations" means the Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), "open-ended investment company" has the same meaning as in Chapter 3 of Part 12 of ICTA (unit trust schemes etc.) (see section 468(10) and (11) of ICTA, as inserted by regulation 10 of the OEIC Regulations),

"owner of shares" has the same meaning as in that Chapter (see section 468(10) and (15) of that Act, as so inserted), and

**[**[F2]"umbrella company" has the meaning given by section 615 of CTA 2010.**]**

(2) In subsection (1) "accumulation share" means a share in respect of which income is credited periodically to the capital part of the company's scheme property.

(3) In subsection (2) "scheme property" has the same meaning as in Chapter 3 of Part 12 of ICTA (unit trust schemes etc.) (see section 468(10) and (13) of ICTA, as inserted by regulation 10 of the OEIC Regulations).

**Textual Amendments**

**F2** Words in s. 388(1) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 453** (with Sch. 2)

## 389 Authorised unit trust dividend distributions

(1) This section applies if the distribution accounts of an authorised unit trust show the total amount available for distribution to unit holders as available for distribution as dividends.

(2) Subsection (1) is subject to subsection (6).

(3) For income tax purposes dividends are treated as paid to the unit holders.

(4) The amount of the dividends treated as paid to each unit holder is so much of the total amount mentioned in subsection (1) as is proportionate to the unit holder's rights.

(5) The dividends are treated as paid on the shares and by the company referred to in **[**[F3]section 617(1) of CTA 2010**]** (which relates to the trustees of an authorised unit trust being treated as a UK resident company in which the unit holders' rights are shares).

(6) This section does not apply if the authorised unit trust is an approved personal pension scheme.

(7) See section 391 for the interpretation of this section and section 390.

**Textual Amendments**

**F3** Words in s. 389(5) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 454** (with Sch. 2)

## 390 Date when dividends paid under section 389

(1) This section applies for determining the date on which dividends are treated as paid under section 389.

(2) The date on which the dividends are treated as paid depends on whether a date is specified by or in accordance with the trust's terms for any distribution for the distribution period in question.

(3) If such a date is so specified, the dividends are treated as paid on that date.

(4) If no such date is so specified, the dividends are treated as paid on the last day of that period.

### 391 Interpretation of sections 389 and 390

In sections 389 and 390—

"approved personal pension scheme" has the same meaning as in Chapter 4 of Part 14 of ICTA (see section 630(1) of that Act),

"distribution" includes investment on behalf of a unit holder in respect of the holder's accumulation units,

"distribution accounts" means the accounts showing how the total amount available for distribution to unit holders is ascertained, and

"distribution period" means the period by reference to which that amount is ascertained.

*Shares in approved share incentive plans ("SIPs")*

### 392 SIP shares: introduction

(1) Sections 393 to 395 contain special rules about the charge under this Chapter in respect of shares awarded to an individual under an approved share incentive plan.

(2) Those sections only apply if condition A or B was met at the time the shares in question were so awarded.

(3) Condition A is that—

(a) the earnings from the eligible employment were general earnings (see section 7(3) of ITEPA 2003) to which any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 applied, or

(b) if there had been any earnings from it, they would have been such earnings.

(4) In subsection (3)—

(a) "the eligible employment" means the employment resulting in the individual meeting the employment requirement in relation to the plan, and

(b) the reference to any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 has the same meaning as it has in the employment income Parts of that Act (see sections 14(3) and 20(3) of that Act).

(5) Condition B is that—

(a) the shares were awarded before 6th April 2003, and

(b) the individual was liable for tax under Schedule E in respect of the relevant employment.

(6) In subsection (5) "the relevant employment" means the employment by reference to which the individual met the requirements in paragraph 14 of Schedule 8 to FA 2000 (employee share ownership plans: the employment requirement) in relation to the plan.

**Status:** Point in time view as at 17/07/2013.
**Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 3. (See end of Document for details)

(7) See section 396 for the general interpretation of this section and sections 393 to 395.

### 393 Later charge where cash dividends retained in SIPs are paid over

(1) This section applies if a cash dividend is paid over to a participant under paragraph 68(4) of Schedule 2 to ITEPA 2003 (cash dividend paid over if not reinvested etc.).

(2) Tax charged under this Chapter is charged for the tax year in which the cash dividend is paid over instead of the tax year in which it was originally paid.

(3) Tax so charged is charged on the amount of the cash dividend paid over.

(4) The person liable for any tax so charged is the participant.

(5) For the purposes of determining—

(a) whether the participant is entitled to a tax credit under section 397 in respect of a cash dividend so charged, and

(b) the amount of that tax credit,

that section applies as it has effect for the tax year in which the cash dividend is paid over.

(6) For the purposes of this Chapter, the question whether a cash dividend paid over to a participant under paragraph 68(4) of Schedule 2 to ITEPA 2003 is a dividend paid by a company that is UK resident is determined by reference to the tax year in which the dividend was originally paid.

### 394 Distribution when dividend shares cease to be subject to SIP

(1) This section applies if dividend shares cease to be subject to an approved share incentive plan before the end of the period of 3 years beginning with the date on which the shares were acquired on the participant's behalf.

(2) For income tax purposes a distribution is treated as made to the participant in the tax year in which the shares cease to be subject to the plan.

(3) The amount of the distribution treated as made is the amount of the cash dividend applied to acquire the shares on the participant's behalf, so far as it represents a cash dividend paid in respect of plan shares in a UK resident company.

(4) The person liable for any tax charged on the distribution as a result of this section is the participant.

(5) For the purposes of determining—

(a) whether the participant is entitled to a tax credit under section 397 in respect of a distribution so charged, and

(b) if so, the amount of that tax credit,

that section applies as it has effect for the tax year in which the shares cease to be subject to the plan.

(6) But for the purposes of this Chapter, the question whether the distribution under subsection (2) is a distribution by a company that is UK resident is determined by reference to the year in which the company paid the dividend applied to acquire the shares on the participant's behalf.

(7) For rules identifying shares ceasing to be subject to approved share incentive plans, see section 508 of ITEPA 2003.

### 395 Reduction in tax due in cases within section 394

(1) This section applies if—
  (a) a person is liable to tax as a result of section 394, and
  (b) any tax is paid on any capital receipts under section 501 of ITEPA 2003 (charge on capital receipts in respect of plan shares) in respect of the shares that cease to be subject to the approved share incentive plan.

(2) The tax due is to be reduced by an amount equal to the total tax so paid.

(3) In subsection (2) "the tax due" means the amount of tax due as a result of section 394 after deduction of the tax credit determined in accordance with section 394(5).

(4) For rules identifying shares ceasing to be subject to approved share incentive plans, see section 508 of ITEPA 2003.

### 396 Interpretation of sections 392 to 395

(1) This section and sections 392 to 395 form part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).

(2) Accordingly, expressions used in this section or those sections and contained in the index in paragraph 100 of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.

(3) In particular—
  (a) for the meaning of "award of shares" see paragraph 5(1) of that Schedule,
  (b) for the meaning of "ceasing to be subject to plan" see paragraph 97 of that Schedule,
  (c) for the meaning of "dividend shares" see paragraph 62(3)(b) of that Schedule,
  (d) for the meaning of "employment requirement" see paragraph 15(3) of that Schedule,
  (e) for the meaning of "participant" see paragraph 5(4) of that Schedule,
  (f) for the meaning of "plan shares" see paragraphs 86 to 88 and 99(1) of that Schedule, and
  (g) for the meaning of "shares" see paragraphs 87(6) and 99(2) of that Schedule.

*Tax credits and payment and deduction of tax*

### 397 Tax credits for qualifying distributions [F4 of UK resident companies] : UK residents and eligible non-UK residents

(1) A UK resident or eligible non-UK resident receiving a qualifying distribution made by a UK resident company is entitled to a tax credit equal to one-ninth of the amount or value of the distribution (but see subsections (3) and (6)).

(2) Such a person may claim to deduct the tax credit from—

(a) the income tax charged on the person's total income for the tax year in which the distribution is made, [F5]. . .

(b) [F5]. . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(3) Subsection (1) only applies so far as the distribution is brought into charge to tax, and accordingly if the person's total income is reduced by any deductions which fall to be made from the distribution, the tax credit for the distribution is reduced in the same proportion as the distribution.

(4) For the purposes of this section "eligible non-UK resident", in relation to a qualifying distribution, means an individual who at any time in the tax year in which it is received is a non-UK resident within section 278(2) of ICTA **[**[F6]or section 56(3) of ITA 2007**]** (Commonwealth citizens, EEA nationals etc.).

(5) If a distribution is, or is treated under any provision of the Tax Acts as, the income of a person ("P") other than the recipient ("R"), P (not R) is treated as receiving it for the purposes of this section (and so P (not R) is entitled to a tax credit if P falls within subsection (1)).

(6) This section is subject to the following provisions—

**[**[F7]section 504(4) of ITA 2007 (disapplication of certain provisions for income of unauthorised unit trusts),

section 592 of ITA 2007 (no tax credits for borrower under stock lending arrangement),

section 593 of ITA 2007 (no tax credits for interim holder under repo),

section 594 of ITA 2007 (no tax credits for original owner under repo),**]** and

section 171(2B) of FA 1993 (no tax credit for distributions in respect of assets in Lloyd's member's premium trust fund).

**Textual Amendments**

**F4** Words in s. 397 heading inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 3**

**F5** S. 397(2)(b) and preceding word repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1031, 1034, Sch. 1 para. 515(2), **Sch. 3 Pt. 1** (with transitional provisions and savings in Sch. 2)

**F6** Words in s. 397(4) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 515(3)** (with transitional provisions and savings in Sch. 2)

**F7** Words in s. 397(6) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 515(4)** (with transitional provisions and savings in Sch. 2)

**Modifications etc. (not altering text)**

**C1** S. 397 excluded (19.7.2006) by Finance Act 2006 (c. 25), **s. 121(5)** (with Sch. 17 para. 18(2))
S. 397(1) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **s. 504(4)(b)** (with transitional provisions and savings in Sch. 2)

**C2** S. 397 excluded by S.I. 2006/694, regs. 69Z18(5), 69Z19(2) (as inserted (6.4.2008) by The Authorised Investment Funds (Tax) (Amendment) Regulations 2008 (S.I. 2008/705), regs. 1, **5**)

**C3** S. 397 excluded (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 549(2)**, 1184(1) (with Sch. 2)

## [F8 397A Tax credits for distributions of non-UK resident companies: UK residents and eligible non-UK residents

[F9 (1) A UK resident or eligible non-UK resident receiving a relevant distribution made by a non-UK resident company is entitled to a tax credit equal to one-ninth of the amount or value of the grossed up distribution (but see subsections (3) and (6) and section 397AA).]

(3) Subsection [F10 (1)] only applies so far as the distribution is brought into charge to tax, and accordingly if the person's total income is reduced by any deductions which fall to be made from the distribution, the tax credit for the distribution is reduced in the same proportion as the distribution.

(4) The person may claim to deduct the tax credit from the income tax charged on the person's total income for the tax year in which the distribution (or the part of the distribution to which the tax credit relates) is brought into charge to tax.

(5) If a distribution is, or is treated under any provision of the Tax Acts as, the income of a person ("P") other than the recipient ("R"), P (not R) is treated as receiving it for the purposes of this section (and so P (not R) is entitled to a tax credit if P falls within subsection (1)).

(6) This section is subject to the following provisions—

section 171(2B) of FA 1993 (no tax credit for distributions in respect of assets in Lloyd's member's premium trust fund),

section 504(4) of ITA 2007 (disapplication of certain provisions for income of unauthorised unit trusts),

section 592 of ITA 2007 (no tax credits for borrower under stock lending arrangement),

section 593 of ITA 2007 (no tax credits for interim holder under repo), and

section 594 of ITA 2007 (no tax credits for original owner under repo).

(7) In this section—

"eligible non-UK resident", in relation to a distribution, means an individual who, at any time in the tax year in which the distribution (or the part of the distribution to which the tax credit relates) is brought into charge to tax, is a non-UK resident who meets the condition in section 56(3) of ITA 2007 (residence etc of claimants),

"grossed up distribution" means the distribution increased by the amount of any tax chargeable in respect of the distribution directly or by deduction under the laws of the territory in which the company is resident, including special withholding tax,

F11 . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

"relevant distribution", in relation to a person, means—

(a) a qualifying distribution arising in a relevant tax year,
(b) a cash dividend paid over to the person under paragraph 68(4) of Schedule 2 of ITEPA 2003 (cash dividend paid over if not reinvested etc) in a relevant tax year, and
(c) a dividend treated under section 407 as paid to the person in a relevant tax year,

"relevant tax year" means the tax year 2008-09 or a subsequent tax year, and "special withholding tax" has the meaning given in [F12section 136(6) of TIOPA 2010].

(8) Section 397B makes provision about the application of this section in the case of overseas dividends arising from manufactured overseas dividends (within the meaning of Chapter 2 of Part 11 of ITA 2007).

**Textual Amendments**

**F8** Ss. 397A-397C inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 4**

**F9** S. 397A(1) substituted for s. 397A(1)(2) (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 2(2)**

**F10** Word in s. 397A(3) substituted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 2(3)**

**F11** Words in s. 397A(7) omitted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 19 para. 2(4)**

**F12** Words in s. 397A(7) 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), s. 381(1), **Sch. 8 para. 66** (with Sch. 9 paras. 1-9, 22)

**Modifications etc. (not altering text)**

**C4** S. 397A applied (1.12.2009) (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), regs. 1(1), **95(4)**

### [F13397AA Tax credit under section 397A: conditions

(1) Section 397A(1) only applies if condition A, B or C is met.

(2) Condition A is that—

(a) the relevant distribution is made by a company with issued share capital, and

(b) at the time the person receives the relevant distribution, the person is a minority shareholder in the company.

(3) Condition B is that the company that makes the relevant distribution is an offshore fund.

(4) Condition C is that—

(a) the company that makes the relevant distribution is a resident of (and only of) a qualifying territory at the time that the relevant distribution is received, and

(b) if the relevant distribution is one of a series of distributions made as part of a scheme—

(i) each company that makes a distribution in the series (a "scheme distribution") is a resident of (and only of) a qualifying territory at the time that the scheme distribution is received, or

(ii) the scheme is not a tax advantage scheme.

(5) In this section—

"minority shareholder", in relation to a company, has the meaning given in section 397C;

"offshore fund" has the same meaning as in Chapter 5 of Part 17 of ICTA (see sections 756A to 756C of that Act);

"qualifying territory" has the meaning given by or under section 397BA;

"relevant distribution" has the same meaning as in section 397A;

"scheme" includes any scheme, arrangements or understanding of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions;

"tax advantage scheme" means a scheme that, ignoring any incidental purposes, has as its only purpose or purposes either or both of the following—

(a) to enable a person to obtain a tax credit under section 397A, and

(b) to enable a person to obtain (in any territory) any other relief from tax on a distribution.**]**

**Textual Amendments**

**F8** Ss. 397A-397C inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 4**

**F13** S. 397AA inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 3**

**Modifications etc. (not altering text)**

**C5** S. 397AA modified (with effect in accordance with reg. 1 of the amending S.I.) by The Tax Credits (Excluded Companies) Regulations 2009 (S.I. 2009/3333), **reg. 2**

### 397B Tax credits under section 397A: manufactured overseas dividends

(1) This section applies where, under section 581 of ITA 2007, a person is treated as receiving an overseas dividend by virtue of having received a manufactured overseas dividend which is representative of an overseas dividend.

(2) For the purposes of section 397A, the person is treated as receiving a relevant distribution made by a non-UK resident company [F14]... if, and only if, the manufactured overseas dividend is representative of such a distribution.

(3) References in section 397A to the grossed up distribution have effect as if they were references to the gross amount of the overseas dividend of which the manufactured overseas dividend is representative **[**[F15]("the original dividend")**]**, disregarding the amount of any overseas tax credit.

[F16](3A) **[** Section 397AA has effect as if—

(a) the references in subsections (2)(a), (3) and (4)(a) to the relevant distribution were to the original dividend, and

(b) the reference in subsection (2)(b) to the company that makes the relevant distribution were to the company that makes the original dividend.**]**

(4) In this section—

"gross amount", in relation to **[**[F17]an**]** overseas dividend, has the same meaning as in Chapter 2 of Part 11 of ITA 2007 (manufactured payments) (see section 589 of that Act),

"manufactured overseas dividend" and "overseas tax credit" have the same meaning as in Chapter 2 of that Part (see sections 581 and 591 of that Act), and

"overseas dividend" has the same meaning as in that Part (see section 567 of that Act).

**Textual Amendments**

**F8** Ss. 397A-397C inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 4**

**F14** Words in s. 397B(2) omitted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 19 para. 4(2)**

**F15** Words in s. 397B(3) inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 4(3)**

**F16** S. 397B(3A) inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 4(4)**

**F17** Word in s. 397B(4) substituted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 4(5)**

**[F18 397BA Meaning of "qualifying territory"**

(1) For the purposes of section 397AA "qualifying territory" means—

(a) the United Kingdom, or

(b) a territory within subsection (2).

(2) A territory is within this subsection if—

[F19(a) arrangements made in relation to the territory have effect under section 2(1) of TIOPA 2010 ("double taxation relief arrangements"), and]

(b) the arrangements contain a non-discrimination provision.

(3) The Treasury may by regulations—

(a) provide that a territory specified in or of a description specified in the regulations that does not satisfy subsection (2)(a) or (b) is a qualifying territory for the purpose of section 397AA, and

(b) provide that a territory so specified or described that satisfies subsection (2)(a) or (b) is not a qualifying territory for that purpose.

(4) For the purposes of section 397AA a company is a resident of a territory if, under the laws of the territory, the company is liable to tax there—

(a) by reason of its domicile, residence or place of management, but

(b) not in respect only of income from sources in that territory or capital situated there.

(5) In subsection (2) "non-discrimination provision", in relation to double taxation relief arrangements, means a provision to the effect that nationals of a state which is a party to those arrangements (a "contracting state") are not to be subject in any other contracting state to—

(a) any taxation, or

(b) any requirement connected with taxation,

which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.

(6) In subsection (5) "national", in relation to a contracting state, includes—

(a) an individual possessing the nationality or citizenship of the contracting state, and

(b) a legal person, partnership or association deriving its status as such from the laws in force in that contracting state.

(7) Regulations under this section may—

(a) describe a territory by reference to the double taxation relief arrangements for the time being in force in relation to the territory,

(b) make different provision in relation to different descriptions of company, and

(c) make provision having effect in relation to the tax year current on the day on which the regulations are made.

(8) No regulations may be made under this section unless a draft of the instrument containing them has been laid before, and approved by a resolution of, the House of Commons.**]**

**Textual Amendments**

**F8** Ss. 397A-397C inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 4**

**F18** S. 397BA inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 5**

**F19** S. 397BA(2)(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), s. 381(1), **Sch. 8 para. 67** (with Sch. 9 paras. 1-9, 22)

### 397C Meaning of "minority shareholder"

(1) In section **[**[F20]397AA**]** "minority shareholder", in relation to a [F21]... company, means a person whose shareholding in the company is less than 10% of the company's issued share capital.

[F22](1A) **[** Where the company has more than one class of share, the reference in subsection (1) to the company's issued share capital is to issued share capital of the same class as the share in respect of which the distribution is made.**]**

(2) Subsections (3) to (6) make provision about the circumstances in which shares form part of a person's shareholding in a company for the purposes of this section.

(3) Shares form part of a person's shareholding in a company to the extent that the person is beneficially entitled to the shares or to a distribution arising in respect of the shares (or both).

(4) Shares form part of a person's shareholding in the company where—

(a) a person is a settlor in relation to a settlement, and

(b) income arising from shares comprised in the settlement is treated for income tax purposes as the income of that person and of that person alone.

(5) Shares form part of the shareholding in a company of a person ("P") if—

(a) they form part of the shareholding in the company of a person connected with P,

(b) P transferred the shares to the connected person or arranged for the connected person to acquire the shares, and

(c) the purpose of the transfer or arrangement was wholly or mainly to enable P to avoid tax.

(6) Shares form part of a person's shareholding in a company if that person has transferred the shares to another person under a repo or stock lending arrangement.

(7) In this section—

"repo" has the same meaning as in Part 11 of ITA 2007 (see section 569 of that Act),

"settlement" and "settlor" have the same meaning as in Chapter 5 of Part 5 of this Act, and

"stock lending arrangement" has the same meaning as in Part 11 of ITA 2007 (see section 568 of that Act).

[F23][ (8) For the purposes of this section, shares are not of the same class if the amounts paid up on them (otherwise than by way of premium) are different.]]

**Textual Amendments**

**F8** Ss. 397A-397C inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 4**

**F20** Word in s. 397C(1) substituted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 6(2)(a)**

**F21** Words in s. 397C(1) omitted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 19 para. 6(2)(b)**

**F22** S. 397C(1A) inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 6(3)**

**F23** S. 397C(8) inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 6(4)**

## 398 Increase in amount or value of dividends where tax credit available

(1) If a person is entitled to a tax credit [[F24]under section 397 or 397A] in respect of a dividend or other distribution, the amount or value of the dividend or other distribution is treated as increased by the amount of the tax credit for all income tax purposes (except [[F25]sections 397(1) and [[F26]397A(1)]] ).

(2) Subsection (1) does not apply if the distribution is dealt with under Chapter 2 of Part 2 unless the trade consists of the underwriting business of a member of Lloyd's.

**Textual Amendments**

**F24** Words in s. 398(1) inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 5(a)**

**F25** Words in s. 398(1) substituted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 5(b)**

**F26** Word in s. 398(1) substituted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 7**

## 399 Qualifying distributions received by persons not entitled to tax credits

(1) This section applies if a person is not entitled to a tax credit [[F27]under section 397 or 397A] for a qualifying distribution included in the person's income for a tax year.

(2) The person is treated as having paid income tax at the dividend ordinary rate on the amount or value of the distribution (but see subsection (7)).

(3) For the purposes of subsection (2), if the person is non-UK resident the amount or value of the distribution is treated as the grossed up amount, unless the person is a company which is beneficially entitled to the income.

(4) If the person is non-UK resident **[**F28, the amount or value of the distribution is treated for the purposes of Chapters 3, 4 and 6 of Part 9 of ITA 2007 (special rates for trustees' income)**]** as the grossed up amount.

(5) In this section "the grossed up amount" means the actual amount or value of the distribution, grossed up by reference to the dividend ordinary rate for the tax year.

(6) The income tax treated as paid under subsection (2) is not repayable.

(7) Subsection (2) is subject to the following provisions—

**[**F29section 504(4) of ITA 2007 (disapplication of certain provisions for income of unauthorised unit trusts),

section 592 of ITA 2007 (no tax credits for borrower under stock lending arrangement),

section 593 of ITA 2007 (no tax credits for interim holder under repo), and

section 594 of ITA 2007 (no tax credits for original owner under repo).**]**

**Textual Amendments**

**F27** Words in s. 399(1) inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 6**

**F28** Words in s. 399(4) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 516(2)** (with transitional provisions and savings in Sch. 2)

**F29** Words in s. 399(7) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 516(3)** (with transitional provisions and savings in Sch. 2)

**Modifications etc. (not altering text)**

**C6** S. 399(2) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **ss. 594(3)**, 1034 (with transitional provisions and savings in Sch. 2)

**C7** S. 399(2) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **ss. 593(3)**, 1034 (with transitional provisions and savings in Sch. 2)

**C8** S. 399(2) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **ss. 592(3)**, 1034 (with transitional provisions and savings in Sch. 2)

**C9** S. 399(2)(6) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **ss. 504(4)(c)**, 1034 (with transitional provisions and savings in Sch. 2)

## 400 Non-qualifying distributions

(1) This section applies if a person's income in a tax year includes a non-qualifying distribution.

(2) The person is treated as having paid income tax at the dividend ordinary rate on the amount or value of the distribution.

(3) The income tax treated as paid under subsection (2) is not repayable.

(4) If the distribution is **[**[F30]assessed (in whole or in part) at the dividend trust rate by virtue of Chapter 3 of Part 9 of ITA 2007 (trustees' accumulated or discretionary income to be charged at special rates), the trustees' liability for income tax at that rate is reduced**]**

(5) The amount of the reduction is equal to income tax at the dividend ordinary rate on so much of the distribution as is assessed at the dividend trust rate.

(6) In this section and section 401 "non-qualifying distribution" means a distribution which is not a qualifying distribution.

**[**[F31](7) Subsection (2) is subject to section 504(4) of ITA 2007 (disapplication of certain provisions for income of unauthorised unit trusts).**]**

**Textual Amendments**

**F30** Words in s. 400(4) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 517(2)** (with transitional provisions and savings in Sch. 2)

**F31** S. 400(7) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 517(3)** (with transitional provisions and savings in Sch. 2)

**Modifications etc. (not altering text)**

**C10** S. 400(2)(3) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **ss. 504(4)(d)**, 1034 (with transitional provisions and savings in Sch. 2)

## 401 Relief: qualifying distribution after linked non-qualifying distribution

(1) Where a person pays an amount in respect of extra liability for a non-qualifying distribution, the person's extra liability for a subsequent qualifying distribution is reduced by that amount if conditions A and B are met.

(2) Condition A is that the non-qualifying distribution consists of the issue of share capital or security.

(3) Condition B is that the qualifying distribution consists of a repayment of the share capital or the principal of the security.

(4) A person's extra liability for a distribution charged to tax for the tax year 1999-2000 or a later tax year is the amount by which the person's liability to income tax on the distribution exceeds the amount it would be if it were charged only at the dividend ordinary rate.

(5) A person's extra liability for a distribution charged to tax for a tax year after the tax year 1992-93 and before the tax year 1999-2000 is the amount by which the person's liability to income tax on the distribution exceeds the amount it would be if it were charged only at the lower rate.

(6) A person's extra liability for a distribution charged to tax for a tax year before the tax year 1993-94 is the amount by which the person's liability to income tax on the distribution exceeds the amount it would be if it were charged only at the basic rate.

**[**F32(6A) The reduction under this section is given effect at Step 6 of the calculation in section 23 of ITA 2007.**]**

(7) In this section "security" has the meaning given in **[**F33section 1117(1) of CTA 2010**]**.

**Textual Amendments**

**F32** S. 401(6A) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 518** (with transitional provisions and savings in Sch. 2)

**F33** Words in s. 401(7) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 455** (with Sch. 2)

## **[**F34401A Recovery of overpaid tax credit etc

(1) If an officer of Revenue and Customs discovers that a payment or set-off of tax credit should not have been made or is excessive, the officer may act in accordance with subsection (3) or (4).

(2) For the purposes of subsection (1) it does not matter whether the payment or set-off was excessive when made or became so later.

(3) The officer may make any assessment that in the officer's judgement is needed to recover—

(a) any income tax that should have been paid, or

(b) any payment of tax credit that should not have been made.

(4) More generally, the officer may make any assessment that in the officer's judgement is needed to secure that the liabilities to income tax (and any liabilities to interest on income tax) of the persons concerned are what they would have been if only the correct set-offs and payments had been made.

(5) TMA 1970 applies to an assessment under this section for recovering a payment of tax credit, or of interest on a tax credit—

(a) as if it were an assessment to income tax for the tax year in respect of which the payment was claimed, and

(b) as if the payment represented a loss of tax to the Crown.

(6) Any sum charged by an assessment such as is mentioned in subsection (5) is due within 14 days after the notice of assessment is issued.

(7) The duty to comply with subsection (6) is subject to any appeal against the assessment.**]**

**Textual Amendments**

**F34** S. 401A inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 456** (with Sch. 2)

## **[**F35401B Power to obtain information

(1) An officer of Revenue and Customs may, for the purposes of section 397, by notice require any person in whose name any shares or loan capital are registered—

(a) to state whether or not that person is the beneficial owner of the shares or loan capital, and
(b) if that person is not the beneficial owner of the shares or loan capital, to provide the name and address of the person on whose behalf the shares or loan capital are registered in that person's name.

(2) Subsections (3) and (4) apply if a company ("the issuing company") appears to an officer of Revenue and Customs to be a close company.

(3) The officer may, for the purposes of section 397, by notice require the issuing company to provide the officer with—
(a) particulars of any bearer securities issued by the company,
(b) the names and addresses of the persons to whom the securities were issued, and
(c) details of the amounts issued to each person.

(4) The officer may, for the purposes of section 397, by notice require—
(a) any person to whom bearer securities were issued by the company, or
(b) any person to or through whom bearer securities issued by the company were subsequently sold or transferred,

to provide any further information that the officer reasonably requires with a view to enabling the officer to find out the names and addresses of the persons beneficially interested in the securities.

(5) In this section—

"loan creditor" has the meaning given by section 453 of CTA 2010, and

"securities" includes—

(a) shares, stocks, bonds, debentures and debenture stock, and
(b) any promissory note or other instrument evidencing indebtedness to a loan creditor of the company.**]**

**Textual Amendments**

**F35** S. 401B inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 457** (with Sch. 2)

### *[F36 Anti-avoidance*

**Textual Amendments**

**F36** S. 401C and cross-heading inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 133**

## 401C Temporary non-residents

(1) This section applies if—
(a) an individual is temporarily non-resident,
(b) a relevant distribution is made or treated as made to the individual in the temporary period of non-residence,

(c) the tax year in which it is made or treated as made ("the distribution year") is a tax year for which the individual is UK resident, and

(d) the amount of income tax charged on the distribution under this Chapter is less than it would have been if the existence of double taxation relief arrangements were disregarded.

(2) Subsections (3) and (4) have effect in cases where the distribution year is not the year of return.

(3) The total income (see Step 1 of the calculation in section 23 of ITA 2007) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount on which tax would be charged under this Chapter in respect of the distribution disregarding any double taxation relief arrangements.

(4) But the notional UK tax on that distribution is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.

(5) If the distribution year is the year of return, the tax charged under this Chapter in respect of the relevant distribution is to be charged and assessed without regard to the existence of double taxation relief arrangements.

(6) For the purposes of this section, a dividend or other distribution is a "relevant distribution" if—

(a) it is a dividend or other distribution of a close company, and

(b) it is made or treated as made to the individual because the individual was at a relevant time—

(i) a material participator in the company, or

(ii) an associate of a material participator in the company.

(7) But a dividend or other distribution within subsection (6) in the form of a cash dividend is not a "relevant distribution" to the extent that the dividend is paid in respect of post-departure trade profits.

(8) "Post-departure trade profits" are—

(a) trade profits of the close company arising in an accounting period that begins after the start of the temporary period of non-residence, and

(b) so much of any trade profits of the close company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.

(9) The extent to which a dividend is paid in respect of post-departure trade profits is to be determined on a just and reasonable basis.

(10) The "notional UK tax" on the relevant distribution is so much of the income tax paid by the individual for the distribution year as is attributable on a just and reasonable basis to the relevant distribution.

(11) If section 393 applies, references in this section to a distribution being made to the individual are to a cash dividend being paid over to the individual.

(12) In this section—

"associate" and "participator" have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);

"material participator" means a participator who has a material interest in the company, as defined in section 457 of that Act;

"relevant time" means—

(a) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or

(b) any time in one or more of the 3 tax years preceding that year;

"trade profits of the close company" means the profits of any trade carried on by the close company, as calculated in accordance with Part 3 of CTA 2009 (trading income).**]**