These notes refer to the Finance Act 2009 (c.10) which received Royal Assent on 21 July 2009

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 40 and Schedule 19: Income Tax Credits for Foreign Distributions

Details of the Schedule

3. Paragraph 2(2) substitutes new subsection 397A(1) for the current subsections 397A(1) and (2) of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA). This has the effect of removing the bar on tax credits applying to distributions from offshore funds.

4. Paragraphs 2(3) and (4) make consequential amendments to subsections 397A (3) and (7).

5. Paragraph 3 inserts new section 397AA (tax credit under section 397A: conditions).

6. New section 397AA(1) provides that section 397A(1) applies only if one of Conditions A, B or C is met.

7. New section 397AA(2) makes provision for Condition A. Condition A is that the company making the relevant distribution has issued share capital and at the time of receipt the person receiving it is a “minority shareholder” as defined in section 397C of ITTOIA.

8. New section 397AA(3) makes provision for Condition B. Condition B is that the company making the relevant distribution is an offshore fund subject to section 378A of ITTOIA which makes provision for offshore funds which are substantially invested in interest-bearing assets. Individuals receiving distributions from such funds will be treated as having received interest.

9. New section 397AA(4) makes provision for Condition C. Condition C is that the company making the relevant distribution is solely a resident of a “qualifying territory” at the time of receipt. If the relevant distribution is one of a series of distributions made as part of a scheme, Condition C is met if each company in the chain of transactions is resident in a “qualifying territory” at the time of receipt, or the scheme is not a tax advantage scheme. A “tax advantage scheme” is a scheme whose only purpose (or purposes) is to obtain the dividend tax credit and/or some other tax relief on a distribution.

10. Paragraphs 4(2) and (3) make a consequential and a drafting amendment to subsection 397B(2) and (3). “The original dividend” is the real dividend of which the manufactured dividend is representative.

11. Paragraph 4(4) inserts new subsection 397B(3A) which provides that where a person receives a manufactured overseas dividend which is representative of an overseas dividend, the references in new section 397AA to “relevant distribution” and “the company that makes the relevant distribution” are to the original dividend, and the company making it, respectively.

12. Paragraph 4(5) makes a drafting amendment to section 397B(4).

13. Paragraph 5 inserts new section 397BA (meaning of “qualifying territory”).

14. New sections 397BA(1) and (2) define a “qualifying territory” as the United Kingdom and any territory which has a Double Taxation Agreement with the UK that contains a “non-discrimination provision”.

15. New section 397BA(3) gives HM Treasury the power to make regulations varying the list of qualifying territories.

16. New section 397BA(4) defines “resident” for the purposes of new section 397 AA. A company is a “resident” of a territory if, under its laws, it is liable to tax there by virtue of domicile, residence or management but not only in respect of its income from sources in that territory or capital located there.

17. New section 397BA(5) defines “non-discrimination provision”. A “non-discrimination provision” is a provision whereby nationals of a contracting state are not subject to taxation, or any requirement connected with it, that is more burdensome than the nationals of the other contracting state in the same circumstances are subject to.

18. New section 397BA(6) defines “national” in the context of a non-discrimination provision. “National” includes an individual with nationality or citizenship, or a legal person, partnership or association under the laws of the contracting state.

19. New section 397BA(8) provides that regulations under this section shall be subject to the affirmative resolution procedure.

20. Paragraph 6(3) inserts new section 397C(1A) which provides that where a company has more than one class of share, the reference to issued share capital in the definition of “minority shareholder” is to issued share capital of the same class as the share in respect of which the distribution is made. Paragraph 6(4) inserts new subsection (8), which provides that shares are treated as being of a different class if the amounts paid up on them are different (other than by way of share premium).

21. Paragraph 7 makes a consequential amendment to section 398(1) (increase in amount or value of dividends where tax credit available).

22. Paragraph 8 inserts new section 873(4) which disapplies section 873(2) of ITTOIA (orders and regulations made under that Act subject to the negative procedure), in cases where any other Parliamentary procedure is expressly provided for.

23. Paragraph 9 makes provision for consequential amendments to the Taxes Management Act 1970.

24. Paragraph 10 makes provision for consequential amendments to the Income and Corporation Taxes Act 1988.

25. Paragraph 11 makes provision for a consequential amendment to section 171 (2B) of the Finance Act 1993 (Lloyd’s underwriters etc: taxation of profits and allowance of losses).

26. Paragraph 12 makes provision for a consequential amendment to the definition of “tax credit” in Schedule 1 to the Income Tax (Earnings and Pensions) Act 2003.

27. Paragraph 13 makes provision for consequential amendments to the Income Tax Act 2007.