



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XVII

TAX AVOIDANCE

CHAPTER II

OTHER PROVISIONS ABOUT SECURITIES

469 Sale and repurchase of securities

- (1) Where the owner of any securities (in this subsection and subsection (3) below referred to as "the owner") agrees to sell or transfer those securities and by the same or any collateral agreement—
- (a) agrees to buy back or re-acquire the securities, or
 - (b) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the following provisions shall have effect—
 - (i) the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of the Tax Acts to be the income of the owner and not to be the income of any other person; and
 - (ii) if the securities are of such a character that the interest payable in respect thereof may be paid without deduction of tax, the owner shall be chargeable to tax at the standard rate under Case VI of Schedule D in respect of the interest which is deemed to be his income as aforesaid, unless he shows that it has borne tax at the standard rate.
- (2) In relation to corporation tax—
- (a) subject to the provisions of the Tax Acts about distributions, interest deemed under subsection (1)(i) above to be the income of the owner shall be chargeable under Case VI of Schedule D, and

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- (b) subsection (1)(ii) above shall not apply.
- (3) The references in subsection (1) above to buying back of reacquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.
- (4) Where any person carrying on a trade which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—
 - (a) agrees to sell back or re-transfer the securities, or
 - (b) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities,
 then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade.
- (5) Subsection (4) above shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.
- (6) This section shall not apply to any income to which section 496(3) of this Act (transactions associated with loans or credit) applies.
- (7) For the purposes of this section—
 - (a) " interest " includes a dividend,
 - (b) " securities " includes stocks and shares,
 - (c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.
- (8) The Board may by notice in writing require any person to furnish them within such time as they may direct (not being less than twenty-eight days), in respect of all securities of which he was the owner at any time during the period specified in the notice, such particulars as they consider necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities.

470 Transfers of income arising from securities

- (1) Where in any chargeable period the owner of any securities (in this section referred to as " the owner ") sells or transfers the right to receive any interest payable (whether before or after the sale or transfer) in respect of the securities without selling or transferring the securities, then, for all the purposes of the Tax Acts, that interest, whether it would or would not be chargeable to tax apart from the provisions of this section—
 - (a) shall be deemed to be the income of the owner or, in a case where the owner is not the beneficial owner of the securities and some other person (hereafter

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in this section referred to as " a beneficiary ") is beneficially entitled to the income arising from the securities, the income of the beneficiary, and

- (b) shall be deemed to be the income of the owner or beneficiary for that chargeable period, and
- (c) shall not be deemed to be the income of any other person:

Provided that, in the case of a sale or other realisation the proceeds whereof are chargeable to tax under Schedule C or under section 159(3) of this Act (foreign dividends, etc.), the interest so deemed to be the income of the owner or beneficiary shall be deemed to be equal in amount to the amount of those proceeds.

- (2) Nothing in subsection (1) of this section shall affect any provision of this Act authorising or requiring the deduction of income tax from any interest which is deemed to be the income of the owner or beneficiary as aforesaid or from the proceeds of any subsequent sale or other realisation of the right to receive that interest:

Provided that the proceeds of any such subsequent sale or other realisation shall not, for any of the purposes of the Tax Acts, be deemed to be the income of the seller or the person on whose behalf the right is otherwise realised.

- (3) Where the securities are of such a character that the interest payable in respect thereof may be paid without deduction of income tax, the owner or beneficiary shall be chargeable to tax at the standard rate under Case VI of Schedule D in respect of any interest which is deemed to be his income by virtue of this section, unless he shows that it has borne tax at the standard rate or that the proceeds of any sale or other realisation of the right to receive that interest have been charged to tax under Schedule C or under section 159(3) of this Act:

Provided that, in any case where if the interest had been chargeable under Case IV or Case V of Schedule D, the computation of tax would have been made by reference to the amount received in the United Kingdom, the tax under Case VI shall be computed on the full amount of the sums which have been or will be received in the United Kingdom in the year of assessment or any subsequent year in which the owner remains the owner of the securities.

- (4) In relation to corporation tax subsection (3) above shall not apply and the following provisions of this subsection shall have effect.

Subject to the provisions of the Tax Acts about distributions, the owner or beneficiary shall, in respect of any interest which is deemed to be his income by virtue of this section, be chargeable to corporation tax under Case VI of Schedule D unless he shows that the proceeds of any sale or other realisation of the right to receive that interest have been charged to tax under Schedule C or under section 159(3) of this Act.

- (5) In this section—

- " interest " includes dividends, annuities and shares of annuities, and
 - " securities " includes stocks and shares.

- (6) The Board may by notice in writing require any person to furnish them within such time as they may direct (not being less than twenty-eight days), in respect of all securities of which he was the owner at any time during the period specified in the notice, with such particulars as they consider necessary for the purposes of this section and for the purpose of discovering whether—

- (a) tax has been borne in respect of the interest on all those securities; or

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- (b) the proceeds of any sale or other realisation of the right to receive the interest on the securities have been charged to tax under Schedule C or section 159(3) of this Act.

Purchase and sale of securities

471 Application of following sections

- (1) Subject as hereinafter provided sections 472, 473 and 474 below relate to cases of a purchase by a person (in those sections referred to as " the first buyer ") of any securities and their subsequent sale by him, the result of the transaction being that interest becoming payable in respect of the securities (in those sections referred to as " the interest") is receivable by the first buyer.
- (2) The said sections do not relate to cases where—
 - (a) the time elapsing between the purchase by the first buyer and his taking steps to dispose of the securities exceeded six months, or
 - (b) that time exceeded one month and it is shown to the satisfaction of the Board that the purchase and sale were each effected at the current market price, and that the sale was not effected in pursuance of an agreement or arrangement made before or at the time of the purchase.

The jurisdiction of the General Commissioners or Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in the exercise of then-functions under this subsection.

- (3) The reference in subsection (2) above to the first buyer taking steps to dispose of the securities shall be construed—
 - (a) if he sold them in the exercise of an option he had acquired, as a reference to his acquisition of the option,
 - (b) in any other case, as a reference to his selling them.
- (4) For the purposes of this and the said three sections a sale of securities similar to, and of the like nominal amount as, securities previously bought (hereinafter referred to as " the original securities ") shall be equivalent to a sale of the original securities, and subsection (3) above shall apply accordingly; and where the first buyer bought parcels of similar securities at different times a subsequent sale of any of the securities shall so far as may be be related to the last to be bought of the parcels, and then to the last but one, and so on:

Provided that a person shall be under no greater liability to tax by virtue of this subsection than he would have been under if instead of selling the similar securities he had sold the original securities.

- (5) Where at the time when a trade is, or is deemed to be, set up and commenced any securities form part of the trading stock belonging to the trade, those securities shall be treated for the purposes of this section as having been sold at that time in the open market by the person to whom they belonged immediately before that time and as having been purchased at that time in the open market by the person thereafter engaged in carrying on the trade ; and, subject to the preceding provisions of this subsection, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued the provisions of this section

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shall apply in relation to the person so engaged after the change as if anything done to or by his predecessor had been done to or by him.

- (6) For the purposes of this and the said three sections—
- (a) " interest" includes a dividend ;
 - (b) " person " includes any body of persons, and references to a person entitled to any exemption from tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption ;
 - (c) " securities " includes stocks and shares ;
 - (d) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred, and for the purposes of this paragraph rights guaranteed by the Treasury shall be treated as rights against the Treasury.

472 Dealers in securities

- (1) Subject to the provisions of this section, if the first buyer is engaged in carrying on a trade which consists of or comprises dealings in securities, then in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade the price paid by him for the securities shall be reduced by the appropriate amount in respect of the interest, as determined in accordance with section 475 below.
- (2) Subsection (1) of this section shall not apply if the first buyer—
- (a) is in the opinion of the Board bona fide carrying on the business of a discount house in the United Kingdom, or
 - (b) is a member of the London Stock Exchange who is recognised by the committee thereof as carrying on the business of a jobber, or
 - (c) is a member of any other stock exchange in the United Kingdom who is recognised by the committee thereof as carrying on the business of a dealer,
- and the securities were bought in the ordinary course of his said business and, in the case of a dealer such as is mentioned in paragraph (c) of this subsection, were securities in which he was authorised by the said committee to deal.
- (3) Subsection (1) of this section shall not apply if the purchase of the securities by the first buyer and their resale, or as the case may be the subsequent sale of similar securities, constitute a transaction which is to be left out of account in computing profits or losses by virtue of section 469(4) above.
- (4) Subsection (1) of this section shall not apply if the securities are overseas securities bought by the first buyer on a stock exchange outside the United Kingdom in the ordinary course of his trade as a dealer in securities and the following conditions are satisfied, namely—
- (a) the interest is brought into account in computing for the purposes of the Tax Acts the profits arising from or loss sustained in the trade, and
 - (b) where credit against tax would fall to be allowed in respect of the interest under section 497 or section 498 of this Act (double taxation relief), the first buyer elects that credit shall not be so allowed.

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In this subsection " overseas securities " means securities of the government of, or of a body of persons resident in, any country or territory outside the United Kingdom and the Republic of Iceland.

473 Persons entitled to exemptions

- (1) If the first buyer is entitled under any enactment to an exemption from tax which, apart from this subsection, would extend to the interest, then the exemption shall not extend to an amount equal to the appropriate amount in respect of the interest, as determined in accordance with section 475 below:

Provided that if the first buyer is entitled as aforesaid and any annual payment is payable by him out of the interest, the annual payment shall be deemed as to the whole thereof to be paid out of profits or gains not brought into charge to income tax, and section 53 of this Act shall apply accordingly.

- (2) This section shall not apply where the exemption arises from the residence of the first buyer in the Republic of Ireland.

474 Persons other than dealers in securities

- (1) If the first buyer carries on a trade not falling within section 472 above, then in ascertaining whether any or what repayment of income tax is to be made to him under section 168 of this Act by reference to any loss sustained in the trade and the amount of his income for the year of assessment his income for which includes the interest, there shall be left out of account—

- (a) the appropriate amount in respect of the interest, as determined in accordance with section 475 below, and
- (b) any tax paid on that amount.

- (2) Where the first buyer is a company which does not carry on a trade falling within section 472 above, the appropriate amount in respect of the interest, as determined in accordance with section 475 below, and any tax paid in respect of or deducted from that amount shall be disregarded except that, for the purposes of corporation tax on chargeable gains—

- (a) where that appropriate amount is determined in accordance with section 475(2) below, the appropriate proportion of the net interest receivable by the first buyer as mentioned in that subsection, and
- (b) where that appropriate amount is determined in accordance with section 475(6) below, the net amount of interest corresponding to the gross interest referred to in that subsection,

shall be treated as if it were a capital distribution within the meaning of Part III of the Finance Act 1965 received in respect of the holding of the securities concerned. This subsection applies to any interest received after 29th April 1969.

475 Meaning of " appropriate amount in respect of" interest

- (1) For the purposes of section 472 above the appropriate amount in respect of the interest is the appropriate proportion of the net interest receivable by the first buyer.

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- (2) For the purposes of sections 473 and 474 above the appropriate amount in respect of the interest is the gross amount corresponding with the appropriate proportion of the net interest receivable by the first buyer.
- (3) For the purposes of this section the appropriate proportion is the proportion which—
 - (a) the period beginning with the date on which the securities were first quoted in the official list of the London Stock Exchange at a price excluding the value of the interest payment last payable before the interest receivable by the first buyer, and ending with the day before the day on which the first buyer bought the securities,bears to—
 - (b) the period beginning with the said date and ending with the day before the first date after the purchase by the first buyer on which the securities are quoted in the said list at a price excluding the value of the interest receivable by the first buyer.
- (4) Where the interest receivable by the first buyer was the first interest payment payable in respect of the securities, paragraphs (a) and (b) of subsection (3) above shall have effect with the substitution, for references to the date on which the securities were first quoted as mentioned in the said paragraph (a), of the beginning of the period for which the interest was payable:

Provided that where the capital amount of the securities was not fully paid at the beginning of the said period and one or more instalments of capital were paid during that period—

 - (a) the interest shall be treated as divided into parts, calculated by reference to the amount of the interest attributable to the capital paid at or before the beginning of the said period and the amount thereof attributable to each such instalment, and
 - (b) treating each of the said parts as interest payable for the said period or, where the part was calculated by reference to any such instalment, as interest payable for the part of the said period beginning with the payment of the instalment, there shall be calculated, in accordance with the preceding provisions of this section, the amount constituting the appropriate proportion of each part, and
 - (c) the appropriate proportion of the interest for the purposes of this section shall be the proportion thereof constituted by the sum of the said amounts.
- (5) In relation to securities not quoted in the official list of the London Stock Exchange, subsection (3) above shall have effect with the substitution for the periods therein mentioned of such periods as in the opinion of the Commissioners having jurisdiction in the matter, correspond therewith in the case of the securities in question.
- (6) Where the securities are of a description such that under the rules of the London Stock Exchange the bargain price is increased, where interest is receivable by the buyer, by reference to gross interest accruing before the bargain date, the preceding subsections shall not apply but for the purposes of sections 472, 473 and 474 above the appropriate amount in respect of the interest shall be the amount of the increase in the bargain price.

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Miscellaneous

476 Company dealing in securities: distribution materially reducing value of holding

- (1) Subsection (2) below applies where a company has, as a dealing company, a holding in another company resident in the United Kingdom (being a body corporate), and—
- (a) the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in that company, and
 - (b) after 29th April 1969 a distribution is, or two or more distributions are, made in respect of the holding, and
 - (c) the value (at any accounting date or immediately before realisation or appropriation) of any security comprised in the holding is materially reduced below the value of the security at the time when it was acquired, and the whole or any part of this reduction is attributable to any distribution falling within paragraph (b) above,

and in relation to any security comprised in the holding, the company having the holding is in subsection (2) below referred to as "the dealing company" and so much of any reduction in title value of the security as is attributable to any distribution falling within paragraph (b) above is in that subsection referred to as "the relevant reduction".

- (2) Where this subsection applies, an amount equal to the relevant reduction in the value of a security comprised in the holding—
- (a) shall, if and so long as the security is not realised or appropriated as mentioned below, be added to the value of the security for the purposes of any valuation,
 - (b) shall be treated, on any realisation of the security in the course of trade, as a trading receipt of the dealing company or, in the event of a partial realisation, shall be so treated to an appropriate extent, and
 - (c) shall be treated as a trading receipt of the dealing company if the security is appropriated in such circumstances that a profit on the sale of the security would no longer form part of the dealing company's trading profits.
- (3) References in this section to a holding in a company refer to a holding of securities by virtue of which the holder may receive distributions made by the company, but so that—
- (a) a company's holdings of different classes in another company shall be treated as separate holdings, and
 - (b) holdings of securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.
- (4) For the purposes of subsection (2) above—
- (a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and
 - (b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class,

and section 533 of this Act (definition of connected persons) shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words "or exercise control of" in each place where they occur there were inserted the words "or to acquire a holding in

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- (5) Where this section applies in relation to a distribution which consists of or includes interest to which section 472 above applies, any reduction under that section in the price paid for the securities in respect of which the distribution is made shall be adjusted in such manner as seems appropriate to the Board to take account of subsection (2) above.
- (6) For the purposes of this section " security " includes a share or other right and a company is a " dealing company " in relation to a holding if a profit on a sale of the holding would be taken into account in computing the company's trading profits.

477 Manufactured dividends: treatment of tax deducted

- (1) Subject to the provisions of this section, where—
 - (a) under a contract for the sale of securities the seller is required to pay to the purchaser the amount of a periodical payment of interest on the securities, and
 - (b) the seller does not satisfy the following condition, that is to say that he is entitled to that payment of interest either as the registered holder of the securities or from a person from whom the seller purchased them,section 53(2) of this Act and Schedule 9 to this Act (which both impose a liability to account for income tax deducted) shall apply as if the payment by the seller were an annual payment made, after due deduction of tax, wholly out of a source other than profits or gains brought into charge to income tax.
- (2) Subsection (1) of this section shall not apply where the interest in question is payable without deduction of tax or where, under the rules of the stock exchange governing the transaction, the payment required to be made in respect of the interest is of the amount of the interest before deduction of tax.
- (3) If for any chargeable period the liability to tax of a jobber or dealing broker is determined on the footing that any excess of his payments in respect of interest on securities over his receipts in respect thereof, being payments made or receipts accrued in pursuance of a contract for the sale or purchase of the securities, is to be treated for all the purposes of the Tax Acts as an annual payment made by him, then as respects that chargeable period subsection (1) of this section shall not apply to him if he sold the securities in the ordinary course of his business as a jobber or dealing broker.
- (4) Where the seller is resident in the United Kingdom and purchased the securities (otherwise than through a broker) from a person not so resident, then paragraph (b) of subsection (1) of this section shall have effect as if after the word " say " there were inserted the word " either " and as if for the words from " either as " to the end of the paragraph there were inserted the words " as the registered holder of the securities or that he shows that he acquired the securities, directly or indirectly, from a person who was so entitled to the payment ".
- (5) Where the seller under such a contract as is mentioned in paragraph (a) of subsection (1) of this section is not resident in the United Kingdom, and the sale is effected through a broker, that subsection shall not apply but unless the broker shows either that the seller was entitled to the payment of interest as the registered holder of the securities or that the seller acquired the securities, directly or indirectly, from a person who was so entitled to the payment, the said section 53(2) of this Act shall apply as if the payment through the broker of the amount of the payment of interest were an annual payment by the broker made, after due deduction of tax, wholly out of such a source as is mentioned in subsection (1) of this section.

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(6) In this section—

" broker " means a member of a stock exchange in the United Kingdom other than a jobber,

" dealing broker ", in relation to any sale of securities, means a member of a stock exchange in the United Kingdom, other than the London Stock Exchange, who is recognised by the committee of his exchange as carrying on the business of a dealer and authorised by them to deal in those securities,

" jobber " means a member of the London Stock Exchange who is recognised by the committee thereof as carrying on the business of a jobber,

" securities " includes shares and stock,

and references to a periodical payment of interest include references to a dividend.

(7) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice in writing served on him require him, within such time not less than twenty-eight days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred such a liability as aforesaid.