



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART VIII

TAXATION OF INCOME AND CHARGEABLE GAINS OF COMPANIES

Taxation of income

337 Companies beginning or ceasing to carry on a trade

- (1) Where a company begins or ceases to carry on a trade, or to be within the charge to corporation tax in respect of a trade, the company's income shall be computed as if that were the commencement or, as the case may be, discontinuance of the trade, whether or not the trade is in fact commenced or discontinued.
- (2) Subject to subsection (3) below and to any other provision of the Corporation Tax Acts which expressly authorises such a deduction, no deduction shall be made in computing income from any source—
 - (a) in respect of dividends or other distributions; nor
 - (b) in respect of any yearly interest, annuity or other annual payment or in respect of any such other payments as are mentioned in section 348(2), but not including sums which are, or but for any exemption would be, chargeable under Schedule A.
- (3) In computing income from a trade, subsection (2)(b) above shall not prevent the deduction of yearly interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom.

338 Allowance of charges on income and capital

- (1) Subject to sections 339, 494 and 787, in computing the corporation tax chargeable for any accounting period of a company any charges on income paid by the company in the accounting period, so far as paid out of the company's profits brought into charge to corporation tax, shall be allowed as deductions against the total profits for the period as reduced by any other relief from tax, other than group relief.

Status: This is the original version (as it was originally enacted).

- (2) Subject to the following subsections, to section 339 and to any other express exceptions, “charges on income” means for the purposes of corporation tax—
- (a) payments of any description mentioned in subsection (3) below, not being dividends or other distributions of the company; and
 - (b) payments which are qualifying donations (within the meaning of section 339);
- but no payment which is deductible in computing profits or any description of profits for purposes of corporation tax shall be treated as a charge on income.
- (3) Subject to subsections (4) to (6) below, the payments referred to in subsection (2)(a) above are—
- (a) any yearly interest (whether charged to revenue or capital), annuity or other annual payment and any such other payments as are mentioned in section 348(2) but not including sums which are or, but for any exemption would be, chargeable under Schedule A; and
 - (b) any other interest (whether charged to revenue or capital) payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom, or from a person who in the opinion of the Board is bona fide carrying on business as a member of the Stock Exchange or bona fide carrying on the business of a discount house in the United Kingdom;
- and for the purposes of this section any interest payable by a company as mentioned in paragraph (b) above shall be treated as paid on its being debited to the company’s account in the books of the person to whom it is payable.
- (4) No such payment as is mentioned in subsection (3)(a) above made by a company to a person not resident in the United Kingdom shall be treated as a charge on income unless the company is so resident and either—
- (a) the company deducts income tax from the payment in accordance with section 349, and accounts under Schedule 16 for the tax so deducted, or
 - (b) it is a payment of interest on a quoted Eurobond falling within section 124; or
 - (c) the payment is a payment of interest falling within section 340; or
 - (d) the payment is one payable out of income brought into charge to tax under Case IV or V of Schedule D.
- (5) No such payment made by a company as is mentioned in subsection (3) above shall be treated as a charge on income if—
- (a) the payment, not being interest, is charged to capital or the payment is not ultimately borne by the company; or
 - (b) the payment is not made under a liability incurred for a valuable and sufficient consideration (and, in the case of a company not resident in the United Kingdom, incurred wholly and exclusively for the purposes of a trade carried on by it in the United Kingdom through a branch or agency), and is not a covenanted donation to charity (within the meaning of section 339).
- (6) No such payment of interest as is mentioned in subsection (3) above made by a company shall be treated as a charge on income unless—
- (a) the company exists wholly or mainly for the purpose of carrying on a trade; or
 - (b) the payment of interest is wholly and exclusively laid out or expended for the purposes of a trade carried on by the company; or
 - (c) the company is an investment company, within the meaning of section 130 and including an authorised unit trust; or

Status: This is the original version (as it was originally enacted).

- (d) the payment of interest would, on the assumptions made below, be eligible for relief under section 353 by virtue of section 354 if it were made by an individual.

For the purposes of paragraph (d) above, it shall be assumed that if the land concerned is occupied by the company the conditions of section 355(1) are satisfied if the land either—

- (i) is not used as a residence; or
(ii) is used as an individual's main or only residence;

but the limit imposed by section 357 shall apply only in a case falling within paragraph (ii) above and shall then apply without regard to any loan made in connection with any other land.

- (7) Any payment to which section 125(1) applies shall not be a charge on income for the purposes of corporation tax.

339 Charges on income: donations to charity

- (1) A qualifying donation is a payment made by a company to a charity, other than—
- (a) a covenanted payment to charity, as defined in section 660(3); and
(b) a payment which is deductible in computing profits or any description of profits for purposes of corporation tax.
- (2) A qualifying donation shall not constitute a charge on the income of the company unless a claim is made by the company and the company is resident in the United Kingdom and is not a close company.
- (3) A payment made by a company is not a qualifying donation unless, on the making of it, the company deducts out of it a sum representing the amount of income tax on it.
- (4) Where, with a view to securing relief under section 338 a company makes a payment subject to such a deduction as is mentioned in subsection (3) above, then, whether or not it proves to be a qualifying donation, the payment—
- (a) shall be treated as a relevant payment for the purposes of Schedule 16; and
(b) shall in the hands of the recipient (whether a charity or not) be treated for the purposes of this Act as if it were an annual payment.
- (5) In any accounting period of a company, the maximum amount allowable under section 338 by virtue of subsection (2)(b) of that section in respect of qualifying donations made by the company shall be a sum equal to 3 per cent. of the dividends paid on the company's ordinary share capital in that accounting period.
- (6) A covenanted donation to charity shall not be regarded for the purposes of the definition of "charges on income" in section 338, or for any of the other purposes of the Corporation Tax Acts, as being, by reason of any provision of this Act, a distribution.
- (7) Notwithstanding anything in any other provision of the Tax Acts, a covenanted donation to charity made by a company shall not be a charge on income for the purposes of section 338 unless the company—
- (a) deducts out of it a sum representing the amount of income tax on it; and
(b) accounts for that tax in accordance with Schedule 16;

Status: This is the original version (as it was originally enacted).

and any such payment from which a deduction is made as mentioned in paragraph (a) above shall be treated as a relevant payment for the purposes of Schedule 16, whether or not it would otherwise fall to be so treated.

- (8) In this section “covenanted donation to charity” means a payment under a disposition or covenant made by the company in favour of a charity whereby the like annual payments (of which the donation is one) become payable for a period which may exceed three years and is not capable of earlier termination under any power exercisable without the consent of the persons for the time being entitled to the payments.
- (9) For the purposes of this section “charity” includes the Trustees of the National Heritage Memorial Fund and the Historic Buildings and Monuments Commission for England and, additionally, in subsections (1) to (5) above includes the Trustees of the British Museum, the Trustees of the British Museum (Natural History) and any Association of a description specified in section 508, but, subject to that, in this section “charity” has the same meaning as in section 506.

340 Charges on income: interest payable to non-residents

- (1) A payment of interest by a company is one to which section 338(4)(c) applies if the company is carrying on a trade and—
- (a) under the terms of the contract under which the interest is payable, the interest is to be paid, or may be required to be paid, outside the United Kingdom; and
 - (b) the interest is in fact paid outside the United Kingdom; and
 - (c) either—
 - (i) the liability to pay the interest was incurred wholly or mainly for the purposes of activities of the company’s trade carried on outside the United Kingdom; or
 - (ii) the interest is payable in a currency other than sterling and, subject to subsection (2) below, the liability to pay the interest was incurred wholly or mainly for the purposes of activities of that trade, wherever carried on.
- (2) Subsection (1)(c)(ii) above does not apply where—
- (a) the trade is carried on by a body of persons over whom the person entitled to the interest has control; or
 - (b) the person entitled to the interest is a body of persons over whom the person carrying on the trade has control; or
 - (c) the person carrying on the trade and the person entitled to the interest are both bodies of persons, and some other person has control over both of them.
- In this subsection references to a body of persons include references to a partnership and “control” has the meaning given by section 840.
- (3) For the purposes of subsection (1) above the company paying the interest shall be treated as carrying on any trade carried on by a 75 per cent. subsidiary of it (both being bodies corporate) if the subsidiary (as well as the company making the payment) is resident in the United Kingdom.
- (4) In determining for the purposes of this section whether one company is a 75 per cent. subsidiary of another that other company shall be treated as not being the owner—

- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
- (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or
- (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

341 Payments of interest etc. between related companies

- (1) This section applies where—
 - (a) the relationship between two companies is as mentioned in subsection (2) below;
 - (b) one of the companies makes to the other a payment which, for the purposes of corporation tax, is a charge on income of the company making it; and
 - (c) in the hands of the company receiving it, the payment is chargeable to tax under Case III of Schedule D.
- (2) The relationship between two companies which is referred to in subsection (1)(a) above is—
 - (a) that one company controls the other; or
 - (b) that another person controls both companies; or
 - (c) that one company is a 51 per cent. subsidiary of the other; or
 - (d) that both companies are 51 per cent. subsidiaries of another company;and section 840 applies for the purposes of this section.
- (3) In a case where this section applies, the payment referred to in subsection (1)(b) above shall be treated for the purposes of corporation tax as received by the company to which it is paid on the same day as that on which it is for those purposes treated as paid by the company paying it.
- (4) Subject to subsection (5) below, where the payment referred to in subsection (1)(b) above is a “relevant payment” for the purposes of Schedule 16, it shall be treated for the purposes of that Schedule as received on the same day as that on which, by virtue of subsection (3) above, it is treated as received for the purposes of corporation tax; and the reference in paragraph 5(1) of that Schedule to the accounting period in which the payment is received shall be construed accordingly.
- (5) Subsection (4) above does not apply if the day on which the payment would be treated as received apart from that subsection falls within the same accounting period (of the receiving company) as the day on which it would be treated as received under that subsection.

342 Tax on company in liquidation

- (1) In this section references to a company’s final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company’s penultimate year are references to the last financial year preceding its final year.
- (2) Subject to subsection (3) below—

Status: This is the original version (as it was originally enacted).

- (a) corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at the rate of corporation tax fixed or proposed for the penultimate year; but
 - (b) where the corporation tax charged on the company's income included in those profits falls to be calculated or reduced in accordance with section 13, it shall be so calculated or reduced in accordance with such rate or fraction fixed or proposed for the penultimate year as is applicable under that section.
- (3) If, before the affairs of the company are completely wound up, any of the rates or fractions mentioned in subsection (2) above has been fixed or proposed for the final year, that subsection shall have effect in relation to that rate or fraction as if for the references to the penultimate year there were substituted references to the final year.
- (4) An assessment on the company's profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because made before the end of the accounting period.
- (5) In making an assessment after the commencement of the winding-up of the company but before the date when its affairs are completely wound up, the inspector may, with the concurrence of the liquidator, act on an assumption as to when that date will fall, so far as it governs section 12(7).
- (6) The assumption of the wrong date shall not alter the company's final and penultimate year, and, if the right date is later, an accounting period shall end on the date assumed, and a new accounting period shall begin and section 12(7) shall thereafter apply as if that new accounting period began with the commencement of the winding-up.
- (7) References in this section to a rate or fraction fixed or proposed are references to a rate or fraction fixed by an Act passed before the completion of the winding-up or, if not so fixed, proposed by a Budget resolution (and without regard to any subsequent Act); except that if a rate or fraction so fixed is proposed to be altered by a Budget resolution any such reference to it is a reference to it as proposed to be so altered.

In this subsection "Budget resolution" means a resolution of the House of Commons for fixing any such rate or fraction as is mentioned in this section.

- (8) Where the winding-up commenced before the company's final year, paragraphs (a) and (b) of subsection (2) (but not subsection (3)) above shall apply in relation to the company's profits arising at any time in its penultimate year.
- (9) Any assessment made by virtue of section 8(4) shall be subject to any such adjustment by discharge or repayment of tax or by a further assessment as may be required to give effect to this section.

343 Company reconstructions without a change of ownership

- (1) Where, on a company ("the predecessor") ceasing to carry on a trade, another company ("the successor") begins to carry it on, and—
- (a) on or at any time within two years after that event the trade or an interest amounting to not less than a three-fourths share in it belongs to the same persons as the trade or such an interest belonged to at some time within a year before that event; and
 - (b) the trade is not, within the period taken for the comparison under paragraph (a) above, carried on otherwise than by a company which is within the charge to tax in respect of it;

Status: This is the original version (as it was originally enacted).

then the Corporation Tax Acts shall have effect subject to subsections (2) to (6) below.

In paragraphs (a) and (b) above references to the trade shall apply also to any other trade of which the activities comprise the activities of the first mentioned trade.

- (2) The trade shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by the Capital Allowances Acts; but—
- (a) there shall be made to or on the successor in accordance with those Acts all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on it; and
 - (b) the amount of any such allowance or charge shall be computed as if—
 - (i) the successor had been carrying on the trade since the predecessor began to do so, and
 - (ii) everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the trade is made to the successor by the predecessor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).

The preceding provisions of this subsection shall not apply if the successor is a dual resident investing company (within the meaning of section 404) which begins to carry on the trade after 31st March 1987.

- (3) The predecessor shall not be entitled to relief under section 394, except as provided by subsection (6) below; and, subject to subsection (4) below and to any claim made by the predecessor under section 393(2), the successor shall be entitled to relief under section 393(1), as for a loss sustained by the successor in carrying on the trade, for any amount for which the predecessor would have been entitled to claim relief if it had continued to carry on the trade.
- (4) Where the amount of relevant liabilities exceeds the value of relevant assets, the successor shall be entitled to relief by virtue of subsection (3) above only if, and only to the extent that, the amount of that excess is less than the amount mentioned in that subsection.

This subsection does not apply where the predecessor ceased to carry on the trade or part of a trade before 19th March 1986 nor, in a case where subsection (7) below applies, in relation to any earlier event, within the meaning of that subsection, which occurred before that date (but without prejudice to its application in relation to any later event which occurred on or after that date).

- (5) Any securities, within the meaning of section 731, which at the time when the predecessor ceases to carry on the trade form part of the trading stock belonging to the trade shall be treated for the purposes of that section as having been sold at that time in the open market by the predecessor and as having been purchased at that time in the open market by the successor.
- (6) On the successor ceasing to carry on the trade—
- (a) if the successor does so within four years of succeeding to it, any relief which might be given to the successor under section 394 on its ceasing to carry on the trade may, so far as it cannot be given to the successor, be given to the predecessor as if the predecessor had incurred the loss (including any amount treated as a loss under subsection (4) of that section); and

Status: This is the original version (as it was originally enacted).

- (b) if the successor ceases to carry on the trade within one year of succeeding to it, relief may be given to the predecessor under that section in respect of any loss incurred by it (or amount treated as such a loss under subsection (4) of that section);

but for the purposes of that section, as it applies by virtue of this subsection to the giving of relief to the predecessor, the predecessor shall be treated as ceasing to carry on the trade when the successor does so.

- (7) Where the successor ceases to carry on the trade within the period taken for the comparison under subsection (1)(a) above and on its doing so a third company begins to carry on the trade, then no relief shall be given to the predecessor by virtue of subsection (6) above by reference to that event, but, subject to that, subsections (2) to (6) above shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that—
 - (a) in relation to the earlier event “successor” shall include the successor at either event; and
 - (b) in relation to the later event “predecessor” shall include the predecessor at either event;

and if the conditions of this subsection are thereafter again satisfied, it shall apply again in like manner.

- (8) Where, on a company ceasing to carry on a trade, another company begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the successor shall be treated for the purposes of this section as a separate trade, if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade; and where, on a company ceasing to carry on part of a trade, another company begins to carry on the activities of that part as its trade or part of its trade, the predecessor shall for purposes of this section be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade.
- (9) Where under subsection (8) above any activities of a company’s trade fall, on the company ceasing or beginning to carry them on, to be treated as a separate trade, such apportionments of receipts, expenses, assets or liabilities shall be made as may be just.
- (10) Where, by virtue of subsection (9) above, any item falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more companies, any question which arises as to the manner in which the item is to be apportioned shall be determined, for the purposes of the tax of all those companies—
 - (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those companies, by those Commissioners, unless all the companies agree that it shall be determined by the Special Commissioners;
 - (b) in a case where different bodies of Commissioners have jurisdiction with respect to those companies, by such of those bodies as the Board may direct, unless all the companies agree that it shall be determined by the Special Commissioners; and
 - (c) in any other case, by the Special Commissioners,

and any such Commissioners shall determine the question in like manner as if it were an appeal except that all those companies shall be entitled to appear and be heard by

the Commissioners who are to make the determination or to make representations to them in writing.

- (11) Any relief obtainable under this section by way of discharge or repayment of tax shall be given on the making of a claim.
- (12) In the application of this section to any case in relation to which subsection (4) above does not apply—
- (a) subsection (9) above shall have effect with the substitution for the words following “separate trade” of the words “any necessary apportionment shall be made of receipts or expenses”; and
 - (b) subsection (10) above shall have effect with the substitution for “item” of “sum”.

344 Company reconstructions: supplemental

- (1) For the purposes of section 343—
- (a) a trade carried on by two or more persons shall be treated as belonging to them in the shares in which they are entitled to the profits of the trade;
 - (b) a trade or interest in a trade belonging to any person as trustee (otherwise than for charitable or public purposes) shall be treated as belonging to the persons for the time being entitled to the income under the trust; and
 - (c) a trade or interest in a trade belonging to a company shall, where the result of so doing is that subsection (1) or (7) of section 343 has effect in relation to an event, be treated in any of the ways permitted by subsection (2) below.
- (2) For the purposes of section 343, a trade or interest in a trade which belongs to a company engaged in carrying it on may be regarded—
- (a) as belonging to the persons owning the ordinary share capital of the company and as belonging to them in proportion to the amount of their holdings of that capital, or
 - (b) in the case of a company which is a subsidiary company, as belonging to a company which is its parent company, or as belonging to the persons owning the ordinary share capital of that parent company, and as belonging to them in proportion to the amount of their holdings of that capital,
- and any ordinary share capital owned by a company may, if any person or body of persons has the power to secure by means of the holding of shares or the possession of voting power in or in relation to any company, or by virtue of any power conferred by the articles of association or other document regulating any company, that the affairs of the company owning the share capital are conducted in accordance with his or their wishes, be regarded as owned by the person or body of persons having that power.
- (3) For the purposes of subsection (2) above—
- (a) references to ownership shall be construed as references to beneficial ownership;
 - (b) a company shall be deemed to be a subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies;
 - (c) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and

Status: This is the original version (as it was originally enacted).

- partly through another company or other companies, shall be determined in accordance with section 838(5) to (10); and
- (d) where any company is a subsidiary of another company, that other company shall be considered as its parent company unless both are subsidiaries of a third company.
- (4) In determining, for the purposes of section 343, whether or to what extent a trade belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose “relative” means husband, wife, ancestor, lineal descendant, brother or sister.
- (5) For the purposes of section 343(4), relevant assets are—
- (a) assets which were vested in the predecessor immediately before it ceased to carry on the trade, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 343, were not by virtue of subsection (9) of that section apportioned to a trade carried on by the company which was the successor on that application; and
- (b) consideration given to the predecessor by the successor in respect of the change of company carrying on the trade;
- and for the purposes of paragraph (b) above the assumption by the successor of any liabilities of the predecessor shall not be treated as the giving of consideration to the predecessor by the successor.
- (6) For the purposes of section 343(4), relevant liabilities are liabilities which were outstanding and vested in the predecessor immediately before it ceased to carry on the trade, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 343, were not by virtue of subsection (9) of that section apportioned to a trade carried on by the company which was the successor on that application; but a liability representing the predecessor’s share capital, share premium account, reserves or relevant loan stock is not a relevant liability.
- (7) For the purposes of section 343(4)—
- (a) the value of assets (other than money) shall be taken to be the price which they might reasonably be expected to have fetched on a sale in the open market immediately before the predecessor ceased to carry on the trade; and
- (b) the amount of liabilities shall be taken to be their amount at that time.
- (8) Where the predecessor transferred a liability to the successor but the creditor concerned agreed to accept settlement of part of the liability as settlement of the whole, the liability shall be treated for the purposes of subsection (6) above as not having been transferred to the successor except as to that part.
- (9) A liability representing the predecessor’s share capital, share premium account, reserves or relevant loan stock shall, for the purposes of subsection (6) above, be treated as not doing so if, in the period of one year ending with the day on which the predecessor ceased to carry on the trade, the liability arose on a conversion of a liability not representing its share capital, share premium account, reserves or relevant loan stock.
- (10) Where a liability of the predecessor representing its relevant loan stock is not a relevant liability for the purposes of section 343(4) but is secured on an asset of the predecessor

not transferred to the successor, the value of the asset shall, for the purposes of section 343(4), be reduced by an amount equal to the amount of the liability.

- (11) In this section “relevant loan stock” means any loan stock or similar security (whether secured or unsecured) except any in the case of which subsection (12) below applies.
- (12) This subsection applies where, at the time the liability giving rise to the loan stock or other security was incurred, the person who was the creditor was carrying on a trade of lending money.