



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XIX

#### SUPPLEMENTAL

##### *Interpretation*

#### **831 Interpretation of this Act**

- (1) In this Act, except so far as the context otherwise requires—
  - (a) “the Corporation Tax Acts” means the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions (including provisions relating also to income tax); and
  - (b) “the Income Tax Acts” means the enactments relating to income tax, including any provisions of the Corporation Tax Acts which relate to income tax.
- (2) In this Act “the Tax Acts”, except so far as the context otherwise requires, means this Act and all other provisions of the Income Tax Acts and the Corporation Tax Acts.
- (3) In this Act—
  - “the Management Act” means the Taxes Management Act 1970;
  - “the 1968 Act” means the Capital Allowances Act 1968;
  - “the 1970 Act” means the Income and Corporation Taxes Act 1970; and
  - “the 1979 Act” means the Capital Gains Tax Act 1979.
- (4) Section 1 of the Family Law Reform Act 1987, the paragraph inserted in Schedule 1 to the Interpretation Act 1978 by paragraph 73 of Schedule 2 to that Act and section 1(3) of the Law Reform (Parent and Child) (Scotland) Act 1986 (legal equality of illegitimate children) shall be disregarded in construing references in this Act to a child or to children (however expressed).
- (5) This Act, so far as it relates to capital gains tax, shall be construed as one with the 1979 Act.

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- (6) Any reference in this Act to a section, Part or Schedule is a reference to that section, Part or Schedule of or to this Act, unless the context otherwise requires.

## **832 Interpretation of the Tax Acts**

- (1) In the Tax Acts, except in so far as the context otherwise requires—

“Act” includes an Act of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly;

“additional rate”, in relation to income tax for any year of assessment, means the rate of income tax determined by subtracting the basic rate for that year from the rate of tax which for that year is applicable to the second higher rate band;

“authorised unit trust” has the meaning given by section 468(6);

“basic rate”, in relation to the charging of income tax for any year of assessment, means the rate of income tax determined in pursuance of section 1(2)(a), and any reference to the basic rate limit shall be construed in accordance with section 1(3);

“the Board” means the Commissioners of Inland Revenue;

“body of persons” means any body politic, corporate or collegiate, and any company, fraternity, fellowship and society of persons whether corporate or not corporate;

“building society” means a building society within the meaning of the Building Societies Act 1986;

“capital allowance” means any allowance under the Capital Allowances Acts;

“the Capital Allowances Acts” means the 1968 Act, Chapter I of Part III of the Finance Act 1971 and Part III of Schedule 13 and Schedule 15 to the Finance Act 1986 (including enactments which under this Act or the 1970 Act are to be treated as contained in Part I of the 1968 Act);

“chargeable gain” has the same meaning as in the 1979 Act;

“chargeable period” means an accounting period of a company or a year of assessment;

“close company” has the meaning given by sections 414 and 415;

“collector” means any collector of taxes;

“company” means, subject to subsection (2) below, any body corporate or unincorporated association but does not include a partnership, a local authority or a local authority association;

“distribution” has the meaning given by Part VI with section 418;

“farm land” means land in the United Kingdom wholly or mainly occupied for the purposes of husbandry, but excluding any dwelling or domestic offices, and excluding market garden land, and “farming” shall be construed accordingly;

“franked investment income” shall be construed in accordance with section 238, but subject to section 247(1);

“franked payment” shall be construed in accordance with section 238, but subject to section 247(1);

“group income” has the meaning given by section 247(2);

“higher rate”, in relation to the charging of income tax for any year of assessment, means any rate of income tax determined in pursuance of

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section 1(2)(b), and any reference to any higher rate band shall be construed in accordance with section 1(3);

“industrial assurance business” has the meaning given by section 1(2) of the Industrial Assurance Act 1923 or Article 3(1) of the Industrial Assurance (Northern Ireland) Order 1979;

“inspector” means any inspector of taxes;

“interest” means both annual or yearly interest and interest other than annual or yearly interest;

“local authority” and “local authority association” have the meanings given by section 519;

“market garden land” means land in the United Kingdom occupied as a nursery or garden for the sale of the produce (other than land used for the growth of hops) and “market gardening” shall be construed accordingly;

“notice” means notice in writing;

“ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company;

“preference dividend” means a dividend payable on a preferred share or preferred stock at a fixed rate per cent. or, where a dividend is payable on a preferred share or preferred stock partly at a fixed rate per cent. and partly at a variable rate, such part of that dividend as is payable at a fixed rate per cent.;

“qualifying distribution” has the meaning given by section 14(2);

“qualifying policy” means a policy of insurance which is a qualifying policy for the purposes of Chapter I of Part VII;

“the rate of advance corporation tax” means the rate referred to in section 14(3);

“recognised clearing system” has the meaning given by section 124(6);

“surplus of franked investment income” has the meaning given by section 238;

“tax credit” means a tax credit under section 231;

“trade” includes every trade, manufacture, adventure or concern in the nature of trade;

“Ulster Savings Certificates” means savings certificates issued or treated as issued under section 15 of the Exchequer and Financial Provisions Act (Northern Ireland) 1950;

“unit holder” has the meaning given by section 468(6);

“unit trust scheme” has the meaning given by section 469;

“year of assessment” means, with reference to any income tax, the year for which such tax was granted by any Act granting income tax;

“the year 1988-89” means the year of assessment beginning on 6th April 1988, and any corresponding expression in which two years are similarly mentioned means the year of assessment beginning on 6th April in the first-mentioned of those two years;

and a source of income is within the charge to corporation tax or income tax if that tax is chargeable on the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax, shall be similarly construed.

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- (2) The definition of “company” is subject to section 468, and does not apply in the following provisions of this Act, that is to say—  
 Chapter I of Part XVII;  
 sections 774 to 777;  
 section 839;  
 paragraph 15 of Schedule 3;  
 (and also does not apply where the context otherwise requires because some other definition of “company” applies).
- (3) Except so far as the context otherwise requires, in the Tax Acts, and in any enactment passed after 12th March 1970 which by any express provision is to be construed as one with the Tax Acts, the Corporation Tax Acts or the Income Tax Acts, “tax”, where neither income tax nor corporation tax is specified, means either of those taxes.
- (4) Subsection (3) above is without prejudice to the provisions of section 9 which apply income tax law for certain purposes of corporation tax, and accordingly the employment of “income tax” rather than “tax” in any provision of the Tax Acts is not a conclusive indication that that provision is not applied to corporation tax by that section.
- (5) In the Tax Acts any reference to a child, however expressed, shall be construed as including a reference to an adopted child.

This subsection does not apply for the purposes of paragraph 10 of Schedule 30.

### **833 Interpretation of Income Tax Acts**

- (1) In the Income Tax Acts references to profits or gains shall not include references to chargeable gains.
- (2) References in the Income Tax Acts to the retail prices index are references to the general index of retail prices (for all items) published by the Department of Employment; and if that index is not published for a month which is relevant for the purposes of any provision of those Acts that provision shall be construed as referring to any substituted index or index figures published by that Department.
- (3) For the purposes of any provision of the Income Tax Acts (other than section 550 or Schedule 2) requiring income of any description to be treated as the highest part of a person’s income, his income shall be calculated without regard to—  
 (a) any payment chargeable to tax by virtue of section 148; or  
 (b) any amount included in his total income by virtue of section 547(1)(a); or  
 (c) any chargeable sum as defined in paragraph 2 of Schedule 2.
- (4) Subject to subsections (5) and (6) below, in the Income Tax Acts “earned income” means, in relation to any individual—  
 (a) any income arising in respect of—  
 (i) any remuneration from any office or employment held by the individual, or  
 (ii) any pension, superannuation or other allowance, deferred pay or compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment, or given to the individual in respect of past

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services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance or deferred pay or not; and

- (b) any income from any property which is attached to or forms part of the emoluments of any office or employment held by the individual; and
- (c) any income which is charged under Schedule A, B or D and is immediately derived by the individual from the carrying on or exercise by him of his trade, profession or vocation, either as an individual or, in the case of a partnership, as a partner personally acting in the partnership.

In cases where the income of a wife is deemed to be income of the husband, any reference in this subsection to the individual includes either the husband or the wife.

- (5) Without prejudice to the generality of the provisions of subsection (4) above, in the Income Tax Acts, except so far as is otherwise expressly provided, “earned income” also includes, in relation to any individual—
  - (a) any income arising in respect of Civil List pensions granted under the Civil List Act 1837 as amended by any subsequent enactment; and
  - (b) any annuity, pension or annual payment to which section 58(2) or 133 applies; and
  - (c) any payments chargeable to income tax under Schedule E by virtue of section 150, 151 or 617;
  - (d) any sum payable by way of annuity to an individual by virtue of a scheme under section 27 of the Agriculture Act 1967 (grants for relinquishing occupation of uncommercial agricultural units), unless the annuity was granted to the individual by reason of his having relinquished occupation before attaining the age of 55; and
  - (e) income which is earned income by virtue of section 529.
- (6) The provisions of this section are without prejudice to any other provision of the Income Tax Acts directing income to be treated as earned income.

### **834 Interpretation of the Corporation Tax Acts**

- (1) For the purposes of the Corporation Tax Acts, except in so far as the context otherwise requires—
  - “accounting date” means the date to which a company makes up its accounts and “period of account” means the period for which it does so;
  - “accounting period” shall be construed in accordance with section 12;
  - “allowable loss” does not include, for the purposes of corporation tax in respect of chargeable gains, a loss accruing to a company in such circumstances that if a gain accrued the company would be exempt from corporation tax in respect of it;
  - “branch or agency” means any factorship, agency, receivership, branch or management;
  - “charges on income” has the meaning given by section 338;
  - “the financial year 1988” means the financial year beginning with April 1988, and similarly with references embodying other dates;
  - “group relief” has the meaning given by section 402.

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- (2) Section 6(4) shall also apply for the purposes of the following provisions of this Act, that is to say—
- Chapter II of Part X, except section 395;
  - sections 75 and 76;
  - section 490;
  - sections 768 and 769;
- and also for sections 73 and 74 of the 1968 Act.
- (3) For all the purposes of the Corporation Tax Acts dividends shall be treated as paid on the date when they become due and payable, except in so far as section 468(1) makes other provision as to amounts treated under that section as dividends.
- (4) Except as otherwise provided by the Corporation Tax Acts, any apportionment to different periods which falls to be made under those Acts shall be made on a time basis according to the respective lengths of those periods.

### **835 “Total income” in the Income Tax Acts**

- (1) In the Income Tax Acts “total income”, in relation to any person, means the total income of that person from all sources estimated in accordance with the provisions of the Income Tax Acts.
- (2) Any person who, on his own behalf or on behalf of another person, delivers a statement of the amount of his or that other person’s total income shall observe the rules and directions contained in section 836.
- (3) Where deductions reduce a person’s total income and the order in which they are made or in which income of different descriptions is reduced thereby may affect his liability to income tax the deductions shall be made and treated as reducing income in accordance with subsections (4) and (5) below.
- (4) Subject to any express provisions of the Income Tax Acts, any deductions allowable in computing a person’s total income or to be made from a person’s total income shall be treated as reducing income of different descriptions in the order which will result in the greatest reduction of his liability to income tax.
- (5) Deductions from total income under Chapter I of Part VII shall be made after any other deductions and shall not affect the amount to be taken as a person’s total income for the purposes of section 257(5) or 274 nor the amount determining whether a person is entitled to relief under section 263 or by how much relief under that section is reduced.
- (6) In estimating the total income of any person—
- (a) any income which is chargeable with income tax by way of deduction at the basic rate in force for any year or which for the purposes of Schedule F comprises an amount equal to a tax credit calculated by reference to the rate of advance corporation tax in force for any year shall be deemed to be income of that year; and
  - (b) any deductions which are allowable on account of sums payable under deduction of income tax at the basic rate in force for any year out of the property or profits of that person shall be allowed as deductions in respect of that year;

notwithstanding that the income or sums, as the case may be, accrued or will accrue in whole or in part before or after that year.

- (7) Where an assessment has become final and conclusive for the purposes of income tax for any year of assessment—
- (a) that assessment shall also be final and conclusive in estimating total income; and
  - (b) no allowance or adjustment of liability, on the ground of diminution of income or loss, shall be taken into account in estimating total income unless that allowance or adjustment has previously been made on an application under the special provisions of the Income Tax Acts relating thereto.
- (8) Subsection (7) above shall apply in relation to—
- (a) any relief under section 353;
  - (b) any relief by reason of the operation of an election for the herd basis under Schedule 5; and
  - (c) any allowance under Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971 to be given by way of discharge or repayment of tax and to be available or available primarily against a specified class of income (that is to say, any capital allowance to which section 71 of the 1968 Act applies, or as provided by section 532 of this Act, any capital allowance to which section 528(2) of this Act applies);
- as it applies in relation to allowances or adjustments on the ground of diminution of income or loss.

### **836 Returns of total income**

The following rules and directions shall be observed in delivering returns of total income under section 835(2)—

First – Declaration of the amount of profits or gains returned, or for which the person in question has been or is liable to be assessed.

Second – Declaration of the amount of rents, interest, annuities or other annual payments, in respect of which the person in question is liable to allow the tax, with the names of the respective persons by whom such payments are to be made, distinguishing the amount of each payment.

Third – Declaration of the amount of annuities or other annual payments (not being interest) to be made out of the property or profits or gains assessed on the person in question, distinguishing each source.

Fourth – Statement of the amount of income derived according to the three preceding declarations.

Fifth – Statement of any tax which the person in question may be entitled to deduct, retain or charge against any other person.

### **837 “Annual value” of land**

- (1) For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, the annual value of land shall be taken to be the rent which might reasonably be expected to be obtained on a letting from year to year if the tenant undertook to pay all usual tenant’s rates and taxes, and if the landlord undertook to bear the costs of the repairs and insurance, and the other expenses, if any, necessary for maintaining the subject of the valuation in a state to command that rent.
- (2) Section 23 of the General Rate Act 1967 (adjustment of gross value by reference to provision of or payment for services etc.) shall apply for the purpose of subsection (1)

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above, and in relation to land in Scotland or Northern Ireland shall apply as if it extended to the whole of the United Kingdom.

- (3) Where any question arises as to the annual value of land it shall be determined by the General Commissioners and those Commissioners shall hear and determine the question in like manner as an appeal.

### **838 Subsidiaries**

- (1) For the purposes of the Tax Acts a body corporate shall be deemed to be—
- (a) a “51 per cent. subsidiary” of another body corporate if and so long as more than 50 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;
  - (b) a “75 per cent. subsidiary” of another body corporate if and so long as not less than 75 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;
  - (c) a “90 per cent. subsidiary” of another body corporate if and so long as not less than 90 per cent. of its ordinary share capital is owned directly by that other body corporate.
- (2) In subsection (1)(a) and (b) above “owned directly or indirectly” by a body corporate means owned, whether directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.
- (3) In this section references to ownership shall be construed as references to beneficial ownership.
- (4) For the purposes of this section the amount of ordinary share capital of one body corporate owned by a second body corporate through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, shall be determined in accordance with the following provisions of this section.
- (5) Where, in the case of a number of bodies corporate, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then for the purposes of this section, the first shall be deemed to own ordinary share capital of the third through the second, and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third and so on.
- (6) In this section—
- (a) any number of bodies corporate of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one, and so on, and, if they are more than three, any three or more of them, are referred to as “a series”;
  - (b) in any series—
    - (i) that body corporate which owns ordinary share capital of another through the remainder is referred to as the “first owner”;
    - (ii) that other body corporate the ordinary share capital of which is so owned is referred to as “the last owned body corporate”;



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- (iii) the remainder, if one only, is referred to as “an intermediary” and, if more than one, are referred to as “a chain of intermediaries”;
  - (c) a body corporate in a series which directly owns ordinary share capital of another body corporate in the series is referred to as “an owner”; and
  - (d) any two bodies corporate in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other bodies corporate in the series, are referred to as being directly related to one another.
- (7) Where every owner in a series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned body corporate.
- (8) Where one of the owners in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned body corporate through the intermediary or chain of intermediaries.
- (9) Where—
- (a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the body corporate to which it is directly related; or
  - (b) every owner in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related;
- the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned body corporate as results from the multiplication of those fractions.
- (10) Where the first owner in any series owns a fraction of the ordinary share capital of the last owned body corporate in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned body corporate, either—
- (a) directly, or
  - (b) through an intermediary or intermediaries which is not a member or are not members of that series, or
  - (c) through a chain or chains of intermediaries of which one or some or all are not members of that series, or
  - (d) in a case where the series consists of more than three bodies corporate, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the bodies corporate of which the chain of intermediaries in the series consists;
- then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned body corporate owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

### **839 Connected persons**

- (1) For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, any question whether a person is connected with another shall be determined

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in accordance with the following provisions of this section (any provision that one person is connected with another being taken to mean that they are connected with one another).

- (2) A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband.
- (3) A person, in his capacity as trustee of a settlement, is connected with any individual who in relation to the settlement is a settlor, with any person who is connected with such an individual and with a body corporate which, under section 681 is deemed to be connected with that settlement ("settlement" and "settlor" having for the purposes of this subsection the meanings given by subsection (4) of that section).
- (4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any person with whom he is in partnership, and with the wife or husband or relative of any individual with whom he is in partnership.
- (5) A company is connected with another company—
  - (a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or
  - (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.
- (6) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.
- (7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.
- (8) In this section—
 

"company" includes any body corporate or unincorporated association, but does not include a partnership, and this section shall apply in relation to any unit trust scheme as if the scheme were a company and as if the rights of the unit holders were shares in the company;

"control" shall be construed in accordance with section 416; and

"relative" means brother, sister, ancestor or lineal descendant.

In relation to any period during which section 470(2) has effect the reference above to a unit trust scheme shall be construed as a reference to a unit trust scheme within the meaning of the Prevention of Fraud (Investments) Act 1958 or the Prevention of Fraud (Investments) Act (Northern Ireland) 1940.

#### **840 Meaning of "control" in certain contexts**

For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, "control", in relation to a body corporate, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

#### **841 Recognised stock exchange and recognised investment exchanges**

- (1) In the Tax Acts “recognised stock exchange” means—
  - (a) the Stock Exchange; and
  - (b) any such stock exchange outside the United Kingdom as is for the time being designated for the purposes of this section as a recognised stock exchange by order made by the Board.
- (2) An order made by the Board under this section—
  - (a) may designate a stock exchange by name, or by reference to any class or description of stock exchanges including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom;
  - (b) may contain such transitional and other supplemental provisions as appear to the Board to be necessary or expedient;
  - (c) may be varied or revoked by a subsequent order so made.
- (3) The Board may by regulations make provision securing that enactments in the Tax Acts containing references to the Stock Exchange have effect, for such purposes and subject to such modifications as may be prescribed by the regulations, in relation to all other recognised investment exchanges (within the meaning of the Financial Services Act 1986), or in relation to such of those exchanges as may be prescribed.

#### **842 Investment trusts**

- (1) In the Tax Acts “investment trust” means, as respects any accounting period, a company which is not a close company and which is approved for the purposes of this section for that accounting period by the Board, and the Board shall not approve any company unless it is shown to their satisfaction—
  - (a) that the company’s income is derived wholly or mainly from shares or securities; and
  - (b) subject to subsection (2) below, that no holding in a company, other than an investment trust or a company which would qualify as an investment trust but for paragraph (c) below, represents more than 15 per cent. by value of the investing company’s investments; and
  - (c) that the shares or securities of the company are quoted on the Stock Exchange; and
  - (d) that the distribution as dividend of surpluses arising from the realisation of investments is prohibited by the company’s memorandum or articles of association; and
  - (e) that the company does not retain in respect of any accounting period more than 15 per cent. of the income it derives from shares and securities.

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- (2) Subsection (1)(b) above shall not apply—
- (a) to a holding in a company acquired before 6th April 1965 which on that date represented not more than 25 per cent. by value of the investing company's investments; or
  - (b) to a holding in a company which, when it was acquired, represented not more than 15 per cent. by value of the investing company's investments;
- so long as no addition is made to the holding.
- (3) For the purposes of subsection (2) above—
- (a) “holding” means the shares or securities (whether of one class or more than one class) held in any one company; and
  - (b) an addition is made to a holding whenever the investing company acquires shares or securities of that one company, otherwise than by being allotted shares or securities without becoming liable to give any consideration, and if an addition is made to a holding that holding is acquired when the addition or latest addition is made to the holding; and
  - (c) where in connection with a scheme of reconstruction or amalgamation, a company issues shares or securities to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, without those persons becoming liable to give any consideration, a holding of the shares or securities in the second company and a corresponding holding of the shares or securities so issued shall be regarded as the same holding.
- (4) In this section “company” and “shares” shall be construed in accordance with sections 64, 93 and 155(1) of the 1979 Act.