



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XVII

#### TAX AVOIDANCE

#### CHAPTER I

##### CANCELLATION OF TAX ADVANTAGES FROM CERTAIN TRANSACTIONS IN SECURITIES

#### **703 Cancellation of tax advantage**

(1) Where—

- (a) in any such circumstances as are mentioned in section 704, and
- (b) in consequence of a transaction in securities or of the combined effect of two or more such transactions,

a person is in a position to obtain, or has obtained, a tax advantage, then unless he shows that the transaction or transactions were carried out either for bona fide commercial reasons or in the ordinary course of making or managing investments, and that none of them had as their main object, or one of their main objects, to enable tax advantages to be obtained, this section shall apply to him in respect of that transaction or those transactions.

(2) For the purposes of this Chapter a tax advantage obtained or obtainable by a person shall be deemed to be obtained or obtainable by him in consequence of a transaction in securities or of the combined effect of two or more such transactions, if it is obtained or obtainable in consequence of the combined effect of the transaction or transactions and the liquidation of a company.

(3) Where this section applies to a person in respect of any transaction or transactions, the tax advantage obtained or obtainable by him in consequence thereof shall be counteracted by such of the following adjustments, that is to say an assessment, the nullifying of a right to repayment or the requiring of the return of a repayment already

made (the amount to be returned being chargeable under Case VI of Schedule D and recoverable accordingly), or the computation or recomputation of profits or gains, or liability to tax, on such basis as the Board may specify by notice served on him as being requisite for counteracting the tax advantage so obtained or obtainable.

- (4) Where, by virtue of an assessment under subsection (3) above to counteract a tax advantage obtained in circumstances falling within paragraph D or paragraph E of section 704 and consisting of the avoidance of a charge to income tax, income tax has been paid by any person on an amount specified in the assessment and it appears to the Board that, as a result of that payment, it is just and reasonable in the circumstances that an amount should be treated as having been paid by way of advance corporation tax, the Board shall serve a notice under subsection (5) below on every company which appears to them to be concerned in the transaction or transactions in consequence of which the tax advantage was obtained.
- (5) A notice under this subsection—
- (a) shall provide that, for the purposes of section 239 (but not for the purposes of entitling any person to a tax credit under section 231), such company or each of such companies as may be specified in the notice is to be treated as having paid, on such date as may be so specified, such amount of advance corporation tax as may be so specified in relation to that company;
  - (b) shall specify the amount which is equal to income tax at the basic rate on the amount on which income tax has been paid as mentioned in subsection (4) above; and
  - (c) may contain such supplementary or incidental directions as appear to the Board to be appropriate;
- but the total amount of advance corporation tax which, by virtue of paragraph (a) above, a notice under this subsection may treat as having been paid shall not exceed the amount specified in accordance with paragraph (b) above.
- (6) If, in a case falling within subsection (4) above, it does not appear to the Board that any amount should be treated as having been paid by way of advance corporation tax, the Board shall serve on every company which appears to them to be concerned in the transaction or transactions in consequence of which the tax advantage was obtained in a notice informing the company of the Board's decision that no amount is to be treated as having been paid by way of advance corporation tax.
- (7) In the case of a man and his wife living with him (whether or not she is separately assessed to tax), this Chapter shall, subject to subsection (8) below, be treated as applying to him in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the wife were his property, rights or liabilities in relation to which she had acted only as nominee for him, and shall be treated as applying to the wife in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the man were her property, rights or liabilities in relation to which he had acted only as nominee for her.
- (8) No adjustment made under subsection (3) above by reference to any transaction or transactions to counteract any tax advantage shall by virtue of subsection (7) above be so made that a person bears more tax than if the transaction or transactions had not had as a consequence that any relief or increased relief from, or repayment or increased repayment of, income tax, or any deduction in computing profits or gains, was obtained or obtainable, or that the way in which receipts accrued was such that the recipient did not pay or bear tax on them.

- (9) The Board shall not give a notice under subsection (3) above until they have notified the person in question that they have reason to believe that this section may apply to him in respect of a transaction or transactions specified in the notification; and if within 30 days of the issue of the notification that person, being of opinion that this section does not so apply to him, makes a statutory declaration to that effect stating the facts and circumstances upon which his opinion is based, and sends it to the Board, then subject to subsection (10) below, this section shall not apply to him in respect of the transaction or transactions.
- (10) If, when a statutory declaration has been sent to the Board under subsection (9) above, they see reason to take further action in the matter—
- (a) the Board shall send to the tribunal a certificate to that effect, together with the statutory declaration, and may also send therewith a counter-statement with reference to the matter;
  - (b) the tribunal shall take into consideration the declaration and the certificate, and the counter-statement, if any, and shall determine whether there is or is not a prima facie case for proceeding in the matter, and if they determine that there is no such case this section shall not apply to the person in question in respect of the transaction or transactions;
- but any such determination shall not affect the operation of this section in respect of transactions which include that transaction or some or all of those transactions and also include another transaction or other transactions.
- (11) Any notice or notification under subsection (3) or subsection (9) above, or under section 708, concerning the application of this section to a person who has died may be given or issued to his personal representatives, and the provisions of this Chapter relating to the making of a statutory declaration, to rights of appeal and to the giving of information shall be construed accordingly.
- (12) This section applies whether the tax advantage in question relates to a chargeable period ending before or after the commencement of this Act, but nothing in this section shall authorise the making of an assessment later than six years after the chargeable period to which the tax advantage relates; and no other provision contained in the Tax Acts shall be construed as limiting the powers conferred by this section.

#### **704 The prescribed circumstances**

The circumstances mentioned in section 703(1) are—

- A. That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being a sale or purchase followed by the purchase or sale of the same or other securities, the person in question receives an abnormal amount by way of dividend, and the amount so received is taken into account for any of the following purposes—
- (a) any exemption from tax, or
  - (b) the setting-off of losses against profits or income, or
  - (c) the giving of group relief, or
  - (d) the application of franked investment income in calculating a company's liability to pay advance corporation tax, or
  - (e) the application of a surplus of franked investment income under section 242 or 243, or

- (f) the computation of profits or gains out of which are made payments falling within section 348 or 349(1), or
- (g) the deduction from or set-off against income of interest under section 353.

OR

B. —

- (1) That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being sale or purchase followed by the purchase or sale of the same or other securities, the person in question becomes entitled—
  - (a) in respect of securities held or sold by him, or
  - (b) in respect of securities formerly held by him (whether sold by him or not),
 to a deduction in computing profits or gains by reason of a fall in the value of the securities resulting from the payment of a dividend thereon or from any other dealing with any assets of a company.
- (2) Where a company in the circumstances mentioned in sub-paragraph (1) above becomes entitled to a deduction as there mentioned, section 703 shall apply in relation to any tax advantage obtained or obtainable in consequence of that deduction by another company by way of group relief as if obtained or obtainable by the other company in circumstances falling within sub-paragraph (1) above.

OR

C. —

- (1) That the person in question receives, in consequence of a transaction whereby any other person—
  - (a) subsequently receives, or has received, an abnormal amount by way of dividend; or
  - (b) subsequently becomes entitled, or has become entitled, to a deduction as mentioned in paragraph B(1) above,
 a consideration which either—
  - (i) is, or represents the value of, assets which are (or apart from anything done by the company in question would have been) available for distribution by way of dividend, or
  - (ii) is received in respect of future receipts of the company, or
  - (iii) is, or represents the value of, trading stock of the company,
 and the person in question so receives the consideration that he does not pay or bear tax on it as income.
- (2) The assets mentioned in sub-paragraph (1) above do not include assets which (while of a description which under the law of the country in which the company is incorporated is available for distribution by way of dividend) are shown to represent a return of sums paid by subscribers on the issue of securities.

OR

D. —

- (1) That in connection with the distribution of profits of a company to which this paragraph applies, the person in question so receives as is mentioned in paragraph C(1) above such a consideration as is therein mentioned.

- (2) The companies to which this paragraph applies are—
- (a) any company under the control of not more than five persons, and
  - (b) any other company which does not satisfy the condition that its shares or stocks or some class thereof (disregarding debenture stock, preferred shares or preferred stock), are authorised to be dealt in on the Stock Exchange, and are so dealt in (regularly or from time to time),
- so, however, that this paragraph does not apply to a company under the control of one or more companies to which this paragraph does not apply.
- (3) Subsections (2) to (6) of section 416 shall apply for the purposes of this paragraph.

OR

E. —

- (1) That in connection with the transfer directly or indirectly of assets of a company to which paragraph D above applies to another such company, or in connection with any transaction in securities in which two or more companies to which paragraph D above applies are concerned, the person in question receives non-taxable consideration which is or represents the value of assets available for distribution by such a company, and which consists of any share capital or any security (as defined by section 254(1)) issued by such a company.
- (2) So far as sub-paragraph (1) above relates to share capital other than redeemable share capital, it shall not apply unless and except to the extent that the share capital is repaid (in a winding-up or otherwise), and, where section 703 applies to a person by virtue of sub-paragraph (1) above on the repayment of any share capital, any assessment to tax under subsection (3) of that section shall be an assessment to tax for the year in which the share capital is repaid.
- (3) In this paragraph—
 

“assets available for distribution” means assets which are, or apart from anything done by the company in question would have been, available for distribution by way of dividend, or trading stock of the company;

“non-taxable”, in relation to a person receiving consideration, means that the recipient does not pay or bear tax on it as income (apart from the provisions of this Chapter);

“share” includes stock and any other interest of a member in a company;

and the references in sub-paragraph (2) above to the repayment of share capital include references to any distribution made in respect of any shares in a winding-up or dissolution of the company.

## 705 Appeals against Board’s notices under section 703

- (1) Any person to whom notice has been given under section 703(3) may within 30 days by notice to the Board appeal to the Special Commissioners on the grounds that section 703 does not apply to him in respect of the transaction or transactions in question, or that the adjustments directed to be made are inappropriate.

- (2) If he or the Board are dissatisfied with the determination of the Special Commissioners he or they may, on giving notice to the clerk to the Special Commissioners within 30 days after the determination, require the appeal to be re-heard by the tribunal, and the Special Commissioners shall transmit to the tribunal any document in their possession which was delivered to them for the purposes of the appeal.
- (3) Where notice is given under subsection (2) above, the tribunal shall re-hear and determine the appeal and shall have and exercise the same powers and authorities in relation to the appeal as the Special Commissioners might have and exercise, and the determination of the tribunal thereon shall be final and conclusive.
- (4) Section 56 of the Management Act (statement of case for opinion of High Court etc.) shall apply with the necessary modifications in the case of any such rehearing and determination as it applies in the case of appeals to the General or Special Commissioners.
- (5) On an appeal under subsections (1) to (3) above the Special Commissioners or the tribunal shall have power to cancel or vary a notice under subsection (3) of section 703 or to vary or quash an assessment made in accordance with such a notice, but the bringing of an appeal or the statement of a case shall not affect the validity of a notice given or of any other thing done in pursuance of that subsection pending the determination of the proceedings.
- (6) A company on which a notice has been served under section 703(5) or (6) may within 30 days by notice to the Board appeal to the Special Commissioners on the ground that it is just and reasonable in the circumstances that the company should be treated, for the purposes specified in section 703(6), as having paid an amount of advance corporation tax or, as the case may require, a greater amount of advance corporation tax than is specified in the notice.
- (7) Notwithstanding that a company on which a notice has been served as mentioned in subsection (6) above has made no appeal under that subsection, the company—
  - (a) shall be entitled, to the same extent as the appellant, to receive notice of, and to appear and be heard in, any proceedings arising from the notice referred to in subsection (6) above, whether the proceedings are before the Special Commissioners, by way of further appeal or otherwise;
  - (b) if it does appear, shall be treated as a party to the proceedings and as having the same rights in respect of those proceedings and any decision made therein as the appellant; and
  - (c) whether or not it so appears, shall be bound by any order made in any such proceedings;and no agreement under section 54 of the Management Act (settling of appeals by agreement) shall have effect except with the consent of each company which, by virtue of this subsection, would have been entitled to appear and be heard on the appeal if it had been proceeded with.
- (8) On an appeal under subsection (6) above, the Special Commissioners—
  - (a) may cancel or vary any notice served under section 703(5), or
  - (b) if no such notice was served, may by order make any provision which could have been made by the Board in such a notice.

**706 The tribunal**

For the purposes of this Chapter the tribunal shall consist of—

- (a) a chairman, appointed by the Lord Chancellor, and
- (b) two or more persons appointed by the Lord Chancellor as having special knowledge of and experience in financial or commercial matters.

**707 Procedure for clearance in advance**

(1) The following provisions shall have effect where in pursuance of this section a person furnishes to the Board particulars of a transaction or transactions effected or to be effected by him, that is to say—

- (a) if the Board are of opinion that the particulars, or any further information furnished in pursuance of this paragraph, are not sufficient for the purposes of this section, they shall within 30 days of the receipt thereof notify to that person what further information they require for those purposes, and unless that further information is furnished to the Board within 30 days from the notification, or such further time as the Board may allow, they shall not be required to proceed further under this section;
- (b) subject to paragraph (a) above, the Board shall within 30 days of the receipt of the particulars, or, where that paragraph has effect, of all further information required, notify that person whether or not they are satisfied that the transaction or transactions as described in the particulars were or will be such that no notice under section 703(3) ought to be given in respect of it or them;

and, subject to the following provisions of this section, if the Board notify him that they are so satisfied, section 703 shall not apply to him in respect of that transaction or those transactions.

- (2) If the particulars, and any further information given under this section with respect to any transaction or transactions, are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the Board, any notification given by the Board under this section shall be void.
- (3) In no event shall the giving of a notification under this section with respect to any transaction or transactions prevent section 703 applying to a person in respect of transactions which include that transaction or all or some of those transactions and also include another transaction or other transactions.

**708 Power to obtain information**

Where it appears to the Board that by reason of any transaction or transactions a person may be a person to whom section 703 applies, the Board may by notice served on him require him, within such time not less than 28 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 a notice under section 703(3) should be given in respect of him.

## 709 Meaning of “tax advantage” and other expressions

- (1) In this Chapter “tax advantage” means a relief or increased relief from, or repayment or increased repayment of, tax, or the avoidance or reduction of a charge to tax or an assessment to tax or the avoidance of a possible assessment thereto, whether the avoidance or reduction is effected by receipts accruing in such a way that the recipient does not pay or bear tax on them, or by a deduction in computing profits or gains.
- (2) In this Chapter—
  - “company” includes any body corporate;
  - “securities”—
    - (a) includes shares and stock, and
    - (b) in relation to a company not limited by shares (whether or not it has a share capital) includes also a reference to the interest of a member of the company as such, whatever the form of that interest;
  - “trading stock” has the same meaning as in section 100(1);
  - “transaction in securities” includes transactions, of whatever description, relating to securities, and in particular—
    - (i) the purchase, sale or exchange of securities;
    - (ii) the issuing or securing the issue of, or applying or subscribing for, new securities;
    - (iii) the altering, or securing the alteration of, the rights attached to securities;
- (3) In section 704—
  - (a) references to profits include references to income, reserves or other assets;
  - (b) references to distribution include references to transfer or realisation (including application in discharge of liabilities); and
  - (c) references to the receipt of consideration include references to the receipt of any money or money’s worth.
- (4) For the purposes of section 704 an amount received by way of dividend shall be treated as abnormal if the Board, the Special Commissioners or the tribunal, as the case may be, are satisfied—
  - (a) in the case of a dividend at a fixed rate, that it substantially exceeds the amount which the recipient would have received if the dividend had accrued from day to day and he had been entitled only to so much of the dividend as accrued while he held the securities, so however that an amount shall not be treated as abnormal by virtue only of this paragraph if during the six months beginning with the purchase of the securities the recipient does not sell or otherwise dispose of, or acquire an option to sell, any of those securities or any securities similar to those securities; or
  - (b) in any case, that it substantially exceeds a normal return on the consideration provided by the recipient for the relevant securities, that is to say, the securities in respect of which the dividend was received and, if those securities are derived from securities previously acquired by the recipient, the securities which were previously acquired.
- (5) For the purposes of subsection (4)(a) above 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 those purposes rights guaranteed by the Treasury shall be treated as rights against the Treasury.

(6) For the purposes of subsection (4)(b) above—

- (a) if the consideration provided by the recipient for any of the relevant securities was in excess of their market value at the time he acquired them, or if no consideration was provided by him for any of the relevant securities, the recipient shall be taken to have provided for those securities consideration equal to their market value at the time he acquired them; and
- (b) in determining whether an amount received by way of dividend exceeds a normal return, regard shall be had to the length of time previous to the receipt of that amount that the recipient first acquired any of the relevant securities and to any dividends and other distributions made in respect of them during that time.