



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XVII

#### TAX AVOIDANCE

### CHAPTER VI

#### MISCELLANEOUS

##### *Transactions between associated persons*

#### **770 Sales etc. at an undervalue or overvalue**

- (1) Subject to the provisions of this section and section 771, where any property is sold and—
- (a) the buyer is a body of persons over whom the seller has control or the seller is a body of persons over whom the buyer has control or both the buyer and the seller are bodies of persons over whom the same person or persons has or have control; and
  - (b) the property is sold at a price (“the actual price”) which is either—
    - (i) less than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm’s length (“the arm’s length price”), or
    - (ii) greater than the arm’s length price,then, in computing for tax purposes the income, profits or losses of the seller where the actual price was less than the arm’s length price, and of the buyer where the actual price was greater than the arm’s length price, the like consequences shall ensue as would have ensued if the property had been sold for the arm’s length price.
- (2) Subsection (1) above shall not apply—
- (a) in any case where—

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- (i) the actual price is less than the arm's length price, and
  - (ii) the buyer is resident in the United Kingdom and is carrying on a trade there, and
  - (iii) the price of the property falls to be taken into account as a deduction in computing the profits or gains or losses of that trade for tax purposes; or
  - (b) in any case where—
    - (i) the actual price is greater than the arm's length price, and
    - (ii) the seller is resident in the United Kingdom and is carrying on a trade there, and
    - (iii) the price of the property falls to be taken into account as a trading receipt in computing the profits or gains or losses of that trade for tax purposes; or
  - (c) in relation to any transaction in relation to which section 493(1) or (3) applies; or
  - (d) in relation to any other sale, unless the Board so direct.
- (3) Where a direction is given under subsection (2)(d) above all such adjustments shall be made, whether by assessment, repayment of tax or otherwise, as are necessary to give effect to the direction.

#### **771 Transactions by petroleum companies**

- (1) For the purposes of this section a company is a petroleum company if—
- (a) its activities include any relevant activities; or
  - (b) it is associated with a company whose activities include any relevant activities and its own activities include the ownership, operation or management of ships or pipelines (as defined in section 65 of the Pipelines Act 1962) used for transporting or conveying petroleum or petroleum products.
- (2) “Relevant activities” means any of the following—
- (a) the acquisition or disposal of petroleum or of rights to acquire or dispose of petroleum;
  - (b) the importation into or exportation from the United Kingdom of petroleum products or the acquisition or disposal of rights to such importation or exportation;
  - (c) the acquisition otherwise than for importation into the United Kingdom of petroleum products outside the United Kingdom or the disposal outside the United Kingdom of petroleum products not exported from the United Kingdom by the company making the disposal;
  - (d) the refining or processing of crude petroleum; and
  - (e) the extraction of petroleum, either under rights authorising it or under contractual or other arrangements with persons by whom such rights are exercisable.
- (3) Section 770(2) shall have effect with the omission of paragraphs (a) and (b) in any case where—
- (a) either party to the transaction is a petroleum company or both are petroleum companies; and
  - (b) the activities of either or both are or include activities—

- (i) the profits from which are or would be chargeable to overseas tax for which credit could be given under section 790 or in pursuance of arrangements having effect by virtue of section 788; or
    - (ii) which are exploration or exploitation activities within the meaning of section 830; and
  - (c) the transaction is part of such activities or is connected with them.
- (4) Where both the buyer and the seller are resident in the United Kingdom and the Board, in pursuance of this section, direct that section 770(1) is to apply to the computation of the income, profits or losses of the one, the direction may extend the application of that subsection to the computation of the income, profits or losses of the other, and where it does so adjustments shall be made under section 770(3) accordingly.
- (5) Where any property is sold and either the buyer or the seller is a petroleum company or both are petroleum companies, then if—
  - (a) the sale is part of a transaction or series of transactions (whether or not between the same persons) and its terms are affected by those of the remainder of the transaction or transactions; or
  - (b) what is sold is petroleum extracted under rights exercisable by a company other than the buyer, and not less than 20 per cent. of that company's ordinary share capital was at the time of the sale owned directly or indirectly by one or more of the following, that is to say, the buyer and any companies associated with the buyer;section 770 shall apply in relation to the sale as if in subsection (1) of that section paragraph (a) were omitted.
- (6) Where a petroleum company was a party to a sale of property, then, in determining for the purposes of section 770 what price the property might have been expected to fetch had the parties to the transaction been independent persons dealing at arm's length and what consequences would have ensued in computing the income, profits or losses of the seller or the buyer for tax purposes if the property had been sold for that price, it shall be assumed—
  - (a) that the terms of the transaction would have been such as might have been expected to secure both to the buyer and to the seller a reasonable profit from transactions of the same kind carried out on similar terms over a reasonable period; and
  - (b) that the seller would not have been compelled by law or by executive action of any government to demand a price fixed by law or such action or a price not less than one so fixed; and
  - (c) that, if the transaction was part of a transaction or series of transactions (whether or not between the same persons), its terms would not have been affected by those of the remainder of the transaction or transactions; and
  - (d) in a case where the whole of the property sold is not delivered by the seller within 12 months after the date of the sale—
    - (i) that such part of the property as is delivered within that time would have fetched a price equal to that which it might have been expected to fetch if sold under a contract for the sale of that part and of no other property, being a contract made at the date of the sale; and
    - (ii) that such part of the property not so delivered as is delivered in any calendar month would have fetched a price equal to that which it might have been expected to fetch if sold under a contract for the sale

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of that part and of no other property, being a contract made at the material time in that month;

and no regard shall be had to the terms of similar transactions which were capable of being varied.

In this subsection “calendar month” means a month of the calendar year and “material time”, in relation to a calendar month, means noon on the middle day of the month which, in the case of a month containing an even number of days, shall be taken to be the last day of the first half of the month.

(7) In this section—

“petroleum” includes any mineral oil or relative hydrocarbon and, except in the expression “crude petroleum”, includes natural gas;

“petroleum products” means products derived from petroleum and wholly or substantially of a hydrocarbon nature.

(8) For the purposes of this section—

(a) two companies are associated with one another if one is under the control of the other or both are under the control of the same person or persons, and “control” has the meaning given by section 840;

(b) any question whether ordinary share capital is owned by a company directly or indirectly shall be determined as for the purposes of section 838;

(c) rights are exercisable by a company if they are exercisable by that company alone or jointly with another company or companies.

## **772 Information for purposes of section 770, and appeals**

(1) The Board may, by notice given to any body corporate, require it to give to the Board, within such time (not being less than 30 days) as may be specified in the notice, such particulars (which may include details of relevant documents) as may be so specified of any related transaction which appears to the Board—

(a) to be, or to be connected with, a transaction with respect to which the Board might give a direction under section 770; or

(b) to be relevant for determining whether such a direction could or should be given in any case; or

(c) to be relevant for determining for the purposes of that section what price any property sold would have fetched had the sale been one between independent persons dealing at arm’s length.

(2) For the purposes of a notice under subsection (1) above, a transaction is a related transaction if, but only if, it is one to which the body corporate to which the notice is given, or a body corporate associated with that body, was a party; and for the purposes of this subsection two bodies corporate are associated with one another if one is under the control of the other or both are under the control of the same person or persons.

(3) Where, in the case of a transaction with respect to which it appears to the Board that a direction under section 770 might be given—

(a) one of the parties is a body corporate resident outside the United Kingdom and a 51 per cent. subsidiary of a body corporate (“the parent body”) resident in the United Kingdom; and

(b) the other party is, or is a 51 per cent. subsidiary of, the parent body,

the Board may, by notice given to the parent body, require it to make available for inspection any books, accounts or other documents or records whatsoever of the parent body or, subject to subsection (4) below, of any body of persons over which it has control which relate to that transaction, to any other transaction (of whatever nature) in the same assets, or to transactions (of whatever nature) in assets similar to those to which the first-mentioned transaction related.

- (4) If, in a case in which under subsection (3) above the parent body is by notice required to make available for inspection any books, accounts, documents or records of a body of persons resident outside the United Kingdom over which the parent body has control, it appears to the Board, on the application of the parent body, that the circumstances are such that the requirement ought not to have effect, the Board shall direct that the parent body need not comply with the requirement.
- (5) If, on an application under subsection (4) above, the Board refuse to give a direction under that subsection, the parent body may, by notice given to the Board within 30 days after the refusal, appeal to the Special Commissioners who, if satisfied that the requirement in question ought in the circumstances not to have effect, may determine accordingly.
- (6) Where it appears to the Board that a body of persons may be a party to a transaction or transactions with respect to which a direction under section 770 might be given, then, for the purpose of assisting the Board to determine whether such a direction should be given, an inspector specifically authorised in that behalf by the Board may, at any reasonable time, on production if so required of his authority—
  - (a) enter any premises used in connection with the relevant trade carried on by that body of persons (that is to say, the trade in the course of which the transaction or transactions were effected),
  - (b) inspect there any books, accounts or other documents or records whatsoever relating to that trade which he considers it necessary for him to inspect for that purpose, and
  - (c) require any such books, accounts or other documents or records to be produced to him there for inspection.
- (7) An inspector's authority for entering any premises under subsection (6) above shall state the name of the inspector and the name of the body of persons carrying on the trade in connection with which the premises are used.
- (8) If and so far as the question in dispute on an appeal to the General Commissioners or, in Northern Ireland, to a county court against an assessment to tax arises from a direction of the Board under section 770 the question shall be referred to and determined by the Special Commissioners.

### **773 Interpretation of sections 770 and 771**

- (1) Nothing in sections 770 and 771 shall be construed as affecting the operation of any of the provisions of the 1968 Act or of Chapter I of Part III of the Finance Act 1971.
- (2) In sections 770 and 772—
  - “body of persons” includes a partnership, and
  - “control” has the meaning given by section 840;and, for the purposes of this section, a sale shall be deemed to take place at the time of completion or when possession is given, whichever is the earlier.

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- (3) In determining for the purposes of sections 770 and 771 whether any person (alone or with others) has control over a body of persons—
- (a) there shall be attributed to him any rights or powers of a nominee for him, that is to say, any rights or powers which another possesses on his behalf or may be required to exercise on his direction or behalf;
  - (b) there may also be attributed to him any rights or powers of a person with whom he is connected (within the meaning of section 839 but omitting subsections (5) to (7) and the exception in subsection (4)), including any rights or powers of a nominee for such a person, that is to say, any rights or powers which another possesses on behalf of such a person or may be required to exercise on his direction or behalf.
- (4) Sections 770, 771, except subsection (5)(b), and 772 and this section shall, with the necessary adaptations, have effect in relation to lettings and hirings of property, grants and transfers of rights, interests or licences and the giving of business facilities of whatever kind as they have effect in relation to sales, and the references in those sections to sales, sellers, buyers and prices shall be deemed to be extended accordingly.

#### **774 Transactions between dealing company and associated company**

- (1) Subject to the provisions of this section, where—
- (a) a dealing company becomes entitled to a deduction, in computing the profits or gains of the company for tax purposes for any period, in respect of the depreciation in the value of any right subsisting against an associated company, being a non-dealing company; or
  - (b) a dealing company makes any payment to such an associated company, being a payment in respect of which the dealing company is entitled to a deduction in computing its profits or gains for tax purposes for any period;
- and the depreciation or payment is not brought into account in computing the profits or gains of the non-dealing company, that company shall be deemed to have received on the last day of the period income of an amount equal to the amount of the deduction and shall be chargeable in respect thereof under Case VI of Schedule D.
- (2) Where the non-dealing company is carrying on a trade, the income referred to in subsection (1) above shall, if the company so elects, not be so chargeable but shall be deemed to have been a receipt of the trade, or, if the company is carrying on more than one trade, to have been a receipt of such one of the trades as the company may choose.
- (3) Where the non-dealing company is carrying on, or was formed to carry on a trade, then if—
- (a) either—
    - (i) the right subsisting against it was a right to the repayment of moneys lent for meeting expenditure which has proved (in whole or in part) abortive, or
    - (ii) the payment to the company was made for meeting such expenditure, and
  - (b) that expenditure is such that the company is not entitled in respect of it to any allowance or deduction in computing losses or gains,
- subsection (1) above shall not apply in so far as the expenditure proved abortive.
- (4) For the purposes of this section—

- (a) “company” includes any body corporate;
  - (b) “dealing company” means a company dealing in securities, land or buildings and includes any company whose profits on the sale of securities, land or buildings are part of its trading profits;
  - (c) “non-dealing company” means any company which is not a dealing company;
  - (d) two or more companies shall be treated as associated companies if one has control of the other or others, or any person has control of both or all of them;
  - (e) references to a company (“the first company”) having control of another company (“the second company”) shall be construed as references to the first company having control of the second company either by itself or in conjunction with any person having control over the first company, and “control” has the meaning given by section 840;
  - (f) “securities” includes shares and stock.
- (5) 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 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 he has incurred any such liability to tax.