



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVIII

DOUBLE TAXATION RELIEF

CHAPTER II

RULES GOVERNING RELIEF BY WAY OF CREDIT

Miscellaneous rules

804 Relief against income tax in respect of income arising in years of commencement

- (1) Subject to the provisions of this section, credit for overseas tax paid in respect of any income arising in the years of commencement shall be allowed under this Part against United Kingdom income tax chargeable for any year of assessment in respect of that income if it would have been so allowed but for the fact that credit for that overseas tax had been allowed against the United Kingdom income tax chargeable in respect of that income for a previous year of assessment.
- (2) The amount of credit to be allowed in respect of any income by virtue of this section for any year of assessment shall not exceed the difference between—
 - (a) the total credit allowable against income tax in respect of that income under this Part (including this section) for all years of assessment for which credit is so allowable; and
 - (b) the amount of credit which was in fact so allowed in respect of that income for any earlier year or years of assessment.
- (3) The total credit so allowable in respect of any income for all those years of assessment shall be taken to be the amount of the overseas tax charged on that income, adjusted where the number of the United Kingdom periods of assessment exceeds the number of foreign periods of assessment, in the proportion which the former number bears to the latter, a period for which part only of the income is charged to tax being counted

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not as one period but as a fraction equal to the proportion which that part of the income bears to the whole of the income.

- (4) Where the same income is charged to different overseas taxes for different foreign periods of assessment, subsection (3) above, so far as it relates to the adjustment of overseas tax, shall be applied separately to each of the overseas taxes, and the total credit allowable shall be the aggregate of those taxes after the making of any adjustments in accordance with that subsection as so applied.
- (5) Where credit against income tax for any year of assessment is allowed by virtue of subsection (1) above in respect of any income (“the original income”) and subsequently by reason of the enactments relating to cessations, income arising in a non-basis period from the same source as the original income is not assessed to income tax, then if the amount of credit allowed against income tax in respect of the original income under this Part (including this section) for all years of assessment for which credit is so allowable exceeds the aggregate of the following amounts—
- (a) the amount of the credit against income tax which would have been allowed apart from subsection (1) above for all those years in respect of the original income; and
 - (b) the amount of the overseas tax for which, under this Part, credit would have been allowable against income tax in respect of income arising in the non-basis period from the same source as the original income,
- the person chargeable in respect of income (if any) from the same source in the year of assessment following the non-basis period shall be treated as having received in that year a payment chargeable under Case VI of Schedule D of an amount such that income tax thereon at the basic rate is equal to the excess.
- (6) Any payment which a person is treated by virtue of subsection (5) above as having received shall not on that account constitute income of his for any of the purposes of the Income Tax Acts other than that subsection and in particular no part thereof shall constitute profits or gains brought into charge to income tax for the purposes of section 348.
- (7) Any claim for relief by way of credit under subsection (1) above against income tax for any year of assessment shall be made within six years of the end of that year or, where there is more than one year of assessment in respect of which such relief may be given, within six years of the end of the later of them.
- (8) In this section—

“overseas tax” means tax under the law of a territory outside the United Kingdom;

“non-basis period” means a period the income arising in which is, by reason only of the operation of the enactments relating to cessations, not chargeable to United Kingdom income tax for any year of assessment;

“United Kingdom period of assessment” and “foreign period of assessment”, in relation to any income, mean respectively a year or other period for which under the relevant law the income falls to be charged to the relevant tax;

“years of commencement”, in relation to income from any source, means the first three years of assessment for which income from that source falls to be assessed to income tax, and also, in the case of profits or gains chargeable to tax under Case I or II of Schedule D, the whole of any period falling partly

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within those years such that the profits or gains arising in the period fall to be assessed to income tax for a year of assessment later than those years;
references to the enactments relating to cessations are references to sections 63, 67 and 113; and
references to income arising in any year include, in relation to income the income tax on which is to be computed by reference to the amount of income received in the United Kingdom, references to income received in that year.

805 Elections against credit

Credit shall not be allowed under any arrangements against the United Kingdom taxes chargeable in respect of any income or chargeable gains of any person if he elects that credit shall not be allowed in respect of that income or those gains.

806 Time limit for claims etc

- (1) Subject to subsection (2) below and section 804(7), any claim for an allowance under any arrangements by way of credit for foreign tax in respect of any income or chargeable gain shall be made not later than six years from the end of the chargeable period for which the income or the gain falls to be charged to income tax or corporation tax, or would fall to be so charged if any income tax or corporation tax were chargeable in respect of the income or gain.
- (2) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the laws of any other territory, nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what credit falls to be given.