



# Finance Act 1989

## 1989 CHAPTER 26

### PART II

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### GENERAL

##### *Groups of companies*

#### **97 Set-off of ACT where companies remain in same group**

- (1) In section 240 of the Taxes Act 1988 (set-off of company's ACT against subsidiary's liability to corporation tax) at the end of subsection (5) (set-off not to be made against subsidiary's liability to corporation tax for any accounting period in which, or in any part of which, it was not a subsidiary of the surrendering company) there shall be added the words "unless throughout that period or part both companies were subsidiaries of a third company".
- (2) This section shall have effect in relation to accounting periods ending on or after 14th March 1989.

#### **98 Restriction on set-off of ACT**

- (1) After section 245 of the Taxes Act 1988 there shall be inserted—

##### **"245A Restriction on application of section 240 in certain circumstances**

- (1) This section applies if—
  - (a) there is a change in the ownership of a company ("the relevant company");

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- (b) by virtue of section 240 the relevant company is treated as having paid an amount of advance corporation tax in respect of a distribution made by it at any time before the change; and
  - (c) within the period of six years beginning three years before the change, there is a major change in the nature or conduct of a trade or business of the company which is for the purposes of section 240 the surrendering company in relation to that amount.
- (2) No advance corporation tax which the relevant company is treated by virtue of section 240 as having paid in respect of a distribution made by it in an accounting period beginning before the change of ownership shall be treated under section 239(4) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.
- (3) Subsections (4) and (5) of section 245 shall apply also for the purposes of this section and as if the reference in subsection (4) of section 245 to the period of three years mentioned in subsection (1)(a) of that section were a reference to the period mentioned in subsection (1)(c) above.
- (4) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax.

**245B Restriction on set-off where asset transferred after change in ownership of company**

- (1) Subsection (4) below applies if—
- (a) there is a change in the ownership of a company (“the relevant company”);
  - (b) any advance corporation tax paid by the relevant company in respect of distributions made by it in an accounting period beginning before the change is treated under section 239(4) as paid by it in respect of distributions made by it in an accounting period ending after the change;
  - (c) after the change the relevant company acquires an asset from another company in such circumstances that section 273(1) of the Taxes Act 1970 applies to the acquisition; and
  - (d) a chargeable gain accrues to the relevant company on the disposal of the asset within the period of three years beginning with the change of ownership.
- (2) Subsection (1)(b) above shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.
- (3) For the purposes of subsection (1)(d) above an asset acquired by the relevant company as mentioned in subsection (1)(c) above shall be treated as the same as an asset owned at a later time by that company if the value of the second asset is derived in whole or in part from the first asset, and in particular where

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the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

(4) In relation to the accounting period in which the chargeable gain accrues to the relevant company (“the relevant period”), section 239 shall have effect as if the limit imposed by subsection (2) of that section on the amount of advance corporation tax to be set against the relevant company’s liability to corporation tax were reduced by whichever is the lesser of—

- (a) the amount of advance corporation tax that would have been payable (apart from section 241) in respect of a distribution made at the end of the relevant period of an amount which, together with the advance corporation tax so payable in respect of it, is equal to the chargeable gain, and
- (b) the amount of surplus advance corporation tax in relation to the accounting period which by virtue of subsection (2) above is treated for the purposes of subsection (1)(b) above as ending with the change of ownership.

(5) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax.”

(2) This section shall have effect where the change in the ownership of the relevant company occurs on or after 14th March 1989.

## **99 Dividends etc. paid by one member of a group to another**

(1) Section 247 of the Taxes Act 1988 (dividends etc. paid by one member of a group to another) shall be amended in accordance with this section.

(2) In subsection (1) for paragraph (b) there shall be substituted—

“(b) a trading or holding company which does not fall within subsection (1A) below and which is owned by a consortium the members of which include the receiving company,”.

(3) After subsection (1) there shall be inserted—

“(1A) A company falls within this subsection if—

- (a) it is a 75 per cent. subsidiary of any other company, or
- (b) arrangements of any kind (whether in writing or not) are in existence by virtue of which it could become such a subsidiary.”

(4) After subsection (8) there shall be inserted—

“(8A) Notwithstanding that at any time a company (“the subsidiary company”) is a 51 per cent. subsidiary of another company (“the parent company”) it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

- (a) the parent company would be beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
- (b) the parent company would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.”

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(5) For subsection (9)(c) there shall be substituted—

- “(c) a company is owned by a consortium if 75 per cent. or more of the ordinary share capital of the company is beneficially owned between them by companies resident in the United Kingdom of which none—
- (i) beneficially owns less than 5 per cent. of that capital,
  - (ii) would be beneficially entitled to less than 5 per cent. of any profits available for distribution to equity holders of the company, or
  - (iii) would be beneficially entitled to less than 5 per cent. of any assets of the company available for distribution to its equity holders on a winding-up,
- and those companies are called the members of the consortium.”

(6) After subsection (9) there shall be inserted—

“(9A) Schedule 18 shall apply for the purposes of subsections (8A) and (9)(c) above as it applies for the purposes of section 413(7).”

(7) This section shall have effect in relation to dividends and other sums paid on or after the day on which this Act is passed.

## **100 Change in ownership of company**

(1) Section 769 of the Taxes Act 1988 (which contains rules for determining whether for the purposes of sections 245 and 768 of that Act there is a change in the ownership of a company) shall be amended in accordance with this section.

(2) For subsection (6) there shall be substituted—

- “(6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—
- (a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;
  - (b) in a case falling within subsection (1)(b) above but not within subsection (1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and
  - (c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.

(6A) In subsection (6) above—

“the appropriate proportion”, in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of

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the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

“relevant assets”, in relation to a company, means—

- (a) any ordinary share capital of another company, and
- (b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

(6B) Notwithstanding that at any time a company (“the subsidiary company”) is a 75 per cent. subsidiary of another company (“the parent company”) it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

- (a) the parent company would be beneficially entitled to not less than 75 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
- (b) the parent company would be beneficially entitled to not less than 75 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(6C) Schedule 18 shall apply for the purposes of subsection (6B) above as it applies for the purposes of section 413(7).”

- (3) Subsection (7)(b) and (c) shall cease to have effect.
- (4) This section shall have effect where the change of ownership of a company would be treated as occurring on or after 14th March 1989.

## **101 Treatment of convertible shares or securities for purposes relating to group relief etc**

(1) Paragraph 1 of Schedule 18 to the Taxes Act 1988 (which contains definitions relating to group relief) shall be amended in accordance with this section.

(2) For sub-paragraph (3)(b) there shall be substituted—

“(b) do not carry any right either to conversion into shares or securities of any other description except—

- (i) shares to which sub-paragraph (5A) below applies,
- (ii) securities to which sub-paragraph (5B) below applies, or
- (iii) shares or securities in the company’s quoted parent company, or to the acquisition of any additional shares or securities;”.

(3) For sub-paragraph (5)(a) there shall be substituted—

“(a) which does not carry any right either to conversion into shares or securities of any other description except—

- (i) shares to which sub-paragraph (5A) below applies,
- (ii) securities to which sub-paragraph (5B) below applies, or
- (iii) shares or securities in the company’s quoted parent company, or to the acquisition of any additional shares or securities;”.

(4) After sub-paragraph (5) there shall be inserted—

“(5A) This sub-paragraph applies to any shares which—

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- (a) satisfy the requirements of sub-paragraph (3)(a), (c) and (d) above, and
  - (b) do not carry any rights either to conversion into shares or securities of any other description, except shares or securities in the company's quoted parent company, or to the acquisition of any additional shares or securities.
- (5B) This sub-paragraph applies to any securities representing a loan of or including new consideration and—
- (a) which satisfies the requirements of sub-paragraph (5)(b) and (c) above, and
  - (b) which does not carry any such rights as are mentioned in sub-paragraph (5A)(b) above.
- (5C) For the purposes of sub-paragraphs (3) and (5) to (5B) above a company (“the parent company”) is another company's “quoted parent company” if and only if—
- (a) the other company is a 75 per cent. subsidiary of the parent company,
  - (b) the parent company is not a 75 per cent. subsidiary of any company, and
  - (c) the parent company's ordinary shares (or, if its ordinary share capital is divided into two or more classes, its ordinary shares of each class) are quoted on a recognised stock exchange or dealt in on the Unlisted Securities Market;
- and in this sub-paragraph “ordinary shares” means shares forming part of ordinary share capital.
- (5D) In the application of sub-paragraphs (3) and (5) to (5B) above in determining for the purposes of sub-paragraph (5C)(a) above who are the equity holders of the other company (and, accordingly, whether section 413(7) prevents the other company from being treated as a 75 per cent. subsidiary of the parent company for the purposes of sub-paragraph (5C)(a)), it shall be assumed that the parent company is for the purposes of sub-paragraphs (3) and (5) to (5B) above the other company's quoted parent company.”
- (5) In sub-paragraph (6) for the words “to (5)” there shall be substituted the words “to (5D)”.
- (6) This section, so far as relating to Schedule 18 of the Taxes Act 1988 in its application (by virtue of section 138 below) for the purposes of subsections (1D) and (1E) of section 272 of the Taxes Act 1970, shall be deemed to have come into force on 14th March 1989.

## **102 Surrender of company tax refund etc. within group**

- (1) Subsection (2) below applies where—
- (a) there falls to be made to a company (“the surrendering company”) which is a member of a group throughout the appropriate period a tax refund relating to an accounting period of the company (“the relevant accounting period”), and

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- (b) another company (“the recipient company”) which is a member of the same group throughout the appropriate period also has the relevant accounting period as an accounting period.
- (2) Where this subsection applies the two companies may, at any time before the refund is made to the surrendering company, jointly give notice to the inspector in such form as the Board may require that subsection (4) below is to have effect in relation to the refund or to any part of the refund specified in the notice.
- (3) In subsection (1) above—
- “appropriate period” means the period beginning with the relevant accounting period and ending on the day on which the notice under subsection (2) above is given, and
  - “tax refund relating to an accounting period” means, in relation to a company—
    - (a) a repayment of corporation tax paid by the company for the period,
    - (b) a repayment of income tax in respect of a payment received by the company in the period, or
    - (c) a payment of the whole or part of the tax credit comprised in any franked investment income received by the company in the period.
- (4) Subject to subsection (6) below, where this subsection has effect in relation to any refund or part of a refund—
- (a) the recipient company shall be treated for all purposes of the Tax Acts as having paid on the relevant date an amount of corporation tax for the relevant accounting period equal to the amount of the refund or part, and
  - (b) there shall be treated for all those purposes as having been made to the surrendering company on the relevant date a repayment of corporation tax or income tax or a payment of tax credit (as the case may be) equal to the amount of the refund or part;
- and where the refund is a repayment of corporation tax, any interest relating to it which has been paid by the surrendering company shall be treated as having been paid by the recipient company.
- (5) In subsection (4) above “relevant date”, in relation to a refund, means—
- (a) in so far as it consists of a repayment of corporation tax paid by the surrendering company after the date on which it became due and payable under section 10 of the Taxes Act 1988, the day on which it was paid by that company, and
  - (b) otherwise, the date on which corporation tax for the relevant accounting period became due and payable.
- (6) For the purpose of ascertaining the amount of any penalty to which the recipient company is liable under section 94(6) of the Taxes Management Act 1970, the corporation tax which the company is treated as having paid by subsection (4)(a) above shall be treated as paid on the day on which the notice under subsection (2) above is given (and not on the relevant date).
- (7) A payment for a transferred tax refund—
- (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and
  - (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income;

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and in this subsection “a payment for a transferred tax refund” means a payment made by the receiving company to the surrendering company in pursuance of an agreement between them as respects the giving of a notice under this section, being a payment not exceeding the amount of the refund in question.

- (8) For the purposes of this section two companies are members of the same group if and only if they would be for the purposes of Chapter IV of Part X of the Taxes Act 1988.
- (9) This section shall not apply unless the relevant accounting period ends after such day, not being earlier than 31st March 1992, as the Treasury may by order made by statutory instrument appoint.