



Finance Act 1990

1990 CHAPTER 29

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

International

65 Dual resident companies: capital gains

- (1) In section 267 of the Taxes Act 1970 (company reconstructions etc.) after subsection (2) there shall be inserted—

“(2A) This section does not apply in relation to an asset if the company acquiring it, though resident in the United Kingdom,—

- (a) is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and
 - (b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after the acquisition.”
- (2) In section 273 of the Taxes Act 1970 (transfers within a group) in subsection (2), after paragraph (d) there shall be inserted “or
- (e) a disposal to a company which, though resident in the United Kingdom,—
 - (i) is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and

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(ii) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.”

(3) In section 276 of the Taxes Act 1970 (replacement of business assets by members of a group) in subsection (1A) for the words following “a dual resident investing company” there shall be substituted the words “or a company which, though resident in the United Kingdom,—

- (a) is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and
- (b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of, or of the interest in, the new assets occurring immediately after the acquisition;

and in this subsection “the old assets” and “the new assets” have the same meanings as in section 115 of the Capital Gains Tax Act 1979, and “dual resident investing company” has the same meaning as in section 404 of the Taxes Act 1988.”

- (4) Subsections (1) and (2) above shall apply to disposals on or after 20th March 1990.
- (5) Subject to subsection (6) below, subsection (3) above shall apply where the disposal of, or of the interest in, the old assets or the acquisition of, or of the interest in, the new assets (or both) takes place on or after 20th March 1990.
- (6) Subsection (3) above shall not apply where the acquisition takes place before 20th March 1990 and the disposal takes place within the period of twelve months beginning with the date of the acquisition or such longer period as the Board may by notice in writing allow.

66 Dual resident companies: transfers of assets abroad

- (1) In sections 742(8) and 745(4) of the Taxes Act 1988, after the words “incorporated outside the United Kingdom” there shall be inserted the words “, or regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 as resident in a territory outside the United Kingdom,”.
- (2) Subject to subsection (3) below, this section shall apply in relation to transfers of assets and associated operations on or after 20th March 1990.
- (3) In so far as the amendment of subsection (4) of section 745 relates to subsections (3) (b) and (5) of that section, it shall come into force on that date.

67 Dual resident companies: controlled foreign companies

- (1) In section 749 of the Taxes Act 1988, after subsection (4) there shall be inserted—
 - “(4A) For the purposes of this Chapter, any company which, though resident in the United Kingdom, is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 as resident in a territory outside the United Kingdom shall be treated as if it were resident outside the United Kingdom (and not resident in the United Kingdom).”
- (2) In section 751(2) of that Act, after paragraph (b) there shall be inserted—

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- “(bb) the company becomes, or ceases to be, a company in relation to which section 749(4A) has effect; or”.
- (3) In Schedule 25 to that Act—
- (a) paragraphs 2(1)(c) and 4(1)(c) shall be omitted,
- (b) after paragraph 2(1) there shall be inserted—
- “(1A) A payment of dividend to a company shall not fall within sub-paragraph (1)(d) above unless it is taken into account in computing the company’s income for corporation tax.”, and
- (c) after paragraph 4(1) there shall be inserted—
- “(1A) A payment to a company shall not be a subsequent dividend within the meaning of sub-paragraph (1)(b) above unless it is taken into account in computing the company’s income for corporation tax.”
- (4) Subsections (1) and (2) above shall apply on and after 20th March 1990 and subsection (3) above shall apply to dividends paid on or after that date.

68 Movements of capital between residents of member States

- (1) In section 765 of the Taxes Act 1988 (certain transactions unlawful unless carried out with Treasury consent), in subsection (1), after the words “Subject to the provisions of this section” there shall be inserted the words “and section 765A”.
- (2) After that section there shall be inserted—

“765A Movements of capital between residents of member States

- (1) Section 765(1) shall not apply to a transaction which is a movement of capital to which Article 1 of the Directive of the Council of the European Communities dated 24th June 1988 No. [88/361/EEC](#) applies.
- (2) Where if that Article did not apply to it a transaction would be unlawful under section 765(1), the body corporate in question (that is to say, the body corporate resident in the United Kingdom) shall—
- (a) give to the Board within six months of the carrying out of the transaction such information relating to the transaction, or to persons connected with the transaction, as regulations made by the Board may require, and
- (b) where notice is given to the body corporate by the Board, give to the Board within such period as is prescribed by regulations made by the Board (or such longer period as the Board may in the case allow) such further particulars relating to the transaction, to related transactions, or to persons connected with the transaction or related transactions, as the Board may require.”
- (3) In section 98 of the Taxes Management Act 1970 (penalties for failure to furnish information and for false information)—
- (a) in subsection (1), after the words “Subject to” there shall be inserted the words “the provisions of this section and”;
- (b) after subsection (4) there shall be inserted—

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“(5) In the case of a failure to comply with section 765A(2)(a) or (b) of the principal Act, subsection (1) above shall have effect as if for “£300” there were substituted “£3,000” and as if for “£60” there were substituted “£600”.”;

- (c) in the first column of the Table, after “section 755” there shall be inserted “section 765A(2)(b);”;
- (d) in the second column of the Table, after “section 639” there shall be inserted “section 765A(2)(a);”.

(4) This section shall apply to transactions carried out on or after 1st July 1990.

69 European Economic Interest Groupings

Schedule 11 to this Act (which makes provision about the taxation of income and gains in the case of European Economic Interest Groupings) shall have effect.

70 Transfer of United Kingdom branch or agency

(1) After section 273 of the Taxes Act 1970 there shall be inserted—

“273A Transfer of United Kingdom branch or agency

(1) Subject to subsections (3) and (4) below, subsection (2) below applies for the purposes of corporation tax on chargeable gains where—

- (a) there is a scheme for the transfer by a company (“company A”)—
 - (i) which is not resident in the United Kingdom, but
 - (ii) which carries on a trade in the United Kingdom through a branch or agency,

of the whole or part of the trade to a company resident in the United Kingdom (“company B”),

- (b) company A disposes of an asset to company B in accordance with the scheme at a time when the two companies are members of the same group, and
- (c) a claim in relation to the asset is made by the two companies within two years after the end of the accounting period of company B during which the disposal is made.

(2) Where this subsection applies—

- (a) company A and company B shall be treated as if the asset were acquired by company B for a consideration of such amount as would secure that neither a gain nor a loss would accrue to company A on the disposal, and
- (b) section 127(3) of the Finance Act 1989 shall not apply to the asset by reason of the transfer.

(3) Subsection (2) above does not apply where—

- (a) company B, though resident in the United Kingdom,—
 - (i) is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the

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- Taxes Act 1988 as resident in a territory outside the United Kingdom, and
- (ii) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition, or
- (b) company B is—
- (i) a dual resident investing company, within the meaning of section 404 of the Taxes Act 1988, or
- (ii) an investment trust, within the meaning of section 842 of that Act.
- (4) Subsection (2) above shall not apply unless any gain accruing to company A—
- (a) on the disposal of the asset in accordance with the scheme, or
- (b) where that disposal occurs after the transfer has taken place, on a disposal of the asset immediately before the transfer,
- would be a chargeable gain and would, by virtue of section 11(2)(b) of the Taxes Act 1988, form part of its profits for corporation tax purposes.
- (5) In this section “company” and “group” have the meanings which would be given by section 272 above if subsections (1)(a) and (2) of that section were omitted.”
- (2) In section 272(1) of the Taxes Act 1970—
- (a) for the word “For” there shall be substituted the words “Except as otherwise provided, for”, and
- (b) the words “, subject to section 280(7) below,” shall be omitted.
- (3) In section 275 of that Act for subsection (1) there shall be substituted—
- “(1) Where there is a disposal of an asset acquired in relevant circumstances, section 34 of the Capital Gains Tax Act 1979 (restriction of losses by reference to capital allowances) shall apply in relation to capital allowances made to the person from which it was acquired (so far as not taken into account in relation to a disposal of the asset by that person), and so on as respects previous transfers of the asset in relevant circumstances.
- (1A) In subsection (1) above “relevant circumstances” means circumstances in which section 273 or 273A above applied or in which section 273 above would have applied but for subsection (2) of that section.
- (1B) Subsection (1) above shall not be taken as affecting the consideration for which an asset is deemed under section 273 or 273A to be acquired.”
- (4) In section 281(2) of that Act, after the words “section 273” there shall be inserted the words “or 273A”.
- (5) In section 126C(4) of the Capital Gains Tax Act 1979—
- (a) after the words “section 273” there shall be inserted the words “or 273A”,
- (b) for the words “that section applies” there shall be substituted the words “either of those sections applies”, and
- (c) for the words “that section does not apply” there shall be substituted the words “neither of those sections applies”.

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- (6) In paragraph 10(2)(c) of Schedule 13 to the Finance Act 1984, after the words “section 273(1)” there shall be inserted the words “or 273A”.
- (7) In—
- (a) section 68(7A)(b) of the Finance Act 1985, and
 - (b) paragraph 1(3)(b) of Schedule 8 to the Finance Act 1988,
- after “273,” there shall be inserted “273A,”.
- (8) In paragraph 5 of Schedule 11 to the Finance Act 1988—
- (a) for the words “of the Taxes Act 1970 (which treats” there shall be substituted the words “or 273A of the Taxes Act 1970 (which treat”, and
 - (b) for the words “section 273(1)”, in the second place where they occur, there shall be substituted the words “either of those sections”.
- (9) This section shall apply to disposals on or after 20th March 1990.