



Finance (No. 2) Act 1997

1997 CHAPTER 58

PART III

INCOME TAX AND CORPORATION TAX

Distributions, tax credits etc: avoidance

24 Taxation of dealers in respect of distributions etc

- (1) Section 95 of the Taxes Act 1988 (taxation of dealers in respect of certain qualifying distributions etc) shall be amended in accordance with subsections (2) to (9) below.
- (2) For subsection (1) (qualifying distributions to which Schedule 7 to the Finance Act 1997 applies which are received by a dealer, and payments made by a dealer which are representative of such distributions, to be taken into account in computing profits of the dealer) there shall be substituted—
 - “(1) Where a dealer—
 - (a) receives a relevant distribution, that is to say—
 - (i) any distribution which is made by a company resident in the United Kingdom (“a UK distribution”), or
 - (ii) any payment which is representative of a UK distribution, or
 - (b) makes any payment which is representative of a UK distribution, the distribution or, as the case may be, the payment shall be taken into account in computing the profits of the dealer which are chargeable to tax in accordance with the provisions of this Act applicable to Case I or II of Schedule D.”
- (3) In subsection (1A) (provisions consequential on subsection (1) where dealer receives qualifying distribution to which Schedule 7 to the Finance Act 1997 applies)—
 - (a) in the words preceding paragraph (a), for “qualifying distribution to which Schedule 7 to the Finance Act 1997 applies” there shall be substituted “relevant distribution”;

Status: This is the original version (as it was originally enacted).

- (b) paragraph (b) (distribution not to be treated for the purposes of sections 246D and 246F as a FID received by the dealer) shall cease to have effect;
 - (c) in paragraph (c), for “sections 208 and 234(1)” there shall be substituted “section 208”;
 - (d) paragraph (d) (which disapplies paragraph 2A(2) of Schedule 23A to the Taxes Act 1988 which is repealed by this section) shall be omitted; and
 - (e) the following paragraph shall be inserted at the appropriate place—
 - “(e) section 11(2)(a) shall have effect in relation to that distribution with the omission of the words “(but so that this paragraph shall not include distributions received from companies resident in the United Kingdom)”.”
- (4) Subsection (1B) (which relates to the application of section 732 and which becomes unnecessary in consequence of the amendments made to that section by section 26 below) shall cease to have effect.
- (5) In subsection (2) (meaning of “dealer”)—
- (a) the word “qualifying” shall be omitted in both places where it occurs; and
 - (b) in paragraph (a), after “shares” there shall be inserted “or stock”.
- (6) After subsection (2) there shall be inserted—
- “(2A) The reference in subsection (2) above to the profits of a person does not include the profits of that person in respect of insurance business or any category of insurance business.”
- (7) Subsection (4) (which makes special provision in relation to preference shares) shall cease to have effect.
- (8) Subsection (5) (definitions) shall be omitted.
- (9) For the sidenote there shall be substituted “Taxation of dealers in respect of distributions etc.”
- (10) In section 20(1) of the Taxes Act 1988, in paragraph 2 of Schedule F (distribution in respect of which a person is entitled to a tax credit treated for the purposes of the Tax Acts as representing income equal to the aggregate of the distribution and the tax credit) after “purposes of the Tax Acts” there shall be inserted “(other than section 95(1))”.
- (11) In section 234 of the Taxes Act 1988 (information relating to distributions) in subsection (1), the words “but subject to section 95(1A)(c)” shall be omitted.
- (12) In section 246D(1) of the Taxes Act 1988 (individuals entitled to FIDs treated as receiving grossed-up amount) after “that individual shall be treated” there shall be inserted “(except for the purposes of section 95(1))”.
- (13) In Schedule 23A to the Taxes Act 1988 (manufactured dividends and interest) paragraph 2A(2) (which provides that if the dividend manufacturer is a company not resident in the UK no amount shall be deductible in the case of that company in respect of the manufactured dividend) shall be omitted (and accordingly paragraph 2(3)(c) of that Schedule has effect instead).
- (14) In Schedule 7 to the Finance Act 1997 (special treatment for certain distributions) in paragraph 2 (distributions treated as FIDs) in sub-paragraph (3)—

- (a) paragraph (a) (subjection to section 95(1A)(b)) shall be omitted; and
- (b) in paragraph (b) (subjection to section 247(5B) to (5D)) for “of that Act” there shall be substituted “of the Taxes Act 1988”.

(15) This section has effect in relation to—

- (a) any distribution made on or after 2nd July 1997; and
- (b) any payment which is representative of such a distribution.

25 Repeal of s.95(5) of the Taxes Act 1988: consequential amendments

- (1) In section 246A(9) of the Taxes Act 1988 (which provides that “fixed-rate preference shares” shall be construed in accordance with section 95(5)) for “section 95(5)” there shall be substituted “paragraph 13(6) of Schedule 28B”.
- (2) In Schedule 28B to the Taxes Act 1988 (venture capital trusts) paragraph 13 (general interpretation) shall be amended in accordance with subsections (3) and (4) below.
- (3) In sub-paragraph (5), paragraph (b) (which provides that “fixed-rate preference shares” has the same meaning as in section 95), and the word “and” immediately preceding that paragraph, shall be omitted.
- (4) After sub-paragraph (5) there shall be inserted—
 - “(6) In this paragraph “fixed-rate preference shares” means shares which—
 - (a) were issued wholly for new consideration;
 - (b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities; and
 - (c) do not carry any right to dividends other than dividends which—
 - (i) are of a fixed amount or at a fixed rate per cent. of the nominal value of the shares, and
 - (ii) together with any sum paid on redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued;and in paragraph (a) above “new consideration” has the meaning given by section 254.”
- (5) In Schedule 7 to the Finance Act 1997 (special treatment for certain distributions) paragraph 5 (fixed-rate preference shares) shall be amended in accordance with subsections (6) and (7) below.
- (6) In sub-paragraph (2) (which defines “fixed-rate preference shares” by reference to section 95 of the Taxes Act 1988)—
 - (a) in paragraph (a) for “section 95 of” there shall be substituted “paragraph 13 of Schedule 28B to”; and
 - (b) in paragraph (b) for “section 95(5)(c)(i) of that Act” there shall be substituted “paragraph 13(6)(c)(i) of that Schedule”.
- (7) After sub-paragraph (2) there shall be inserted—
 - “(3) For the purposes of sub-paragraph (2) above, any reference in paragraph 13(6) of Schedule 28B to shares shall be taken as a reference to shares within the meaning of this Schedule.”

Status: This is the original version (as it was originally enacted).

(8) This section has effect on and after 2nd July 1997.

26 Purchase and sale of securities

(1) Section 732 of the Taxes Act 1988 (dealers in securities) shall Purchase and sale be amended as follows. of securities.

(2) After subsection (1) (dealers in securities: reduction for tax purposes of price paid by the appropriate amount in respect of interest) there shall be inserted—

“(1A) Subsection (1) above shall not apply if the interest receivable by the first buyer falls to be taken into account by virtue of section 95(1) in computing profits of his which are chargeable to tax in accordance with the provisions of this Act applicable to Case I or II of Schedule D.”

(3) Subsections (2) and (2A) (exceptions from subsection (1) for certain market makers, recognised clearing houses and members of recognised investment exchanges) shall cease to have effect.

(4) In subsection (4) (exception from subsection (1) for overseas securities bought on a stock exchange outside the United Kingdom if conditions as to computation of profits and non-allowance of credit for foreign tax are satisfied) the words “on a stock exchange outside the United Kingdom” shall be omitted.

(5) For the definition of “overseas securities” in subsection (4) there shall be substituted—

“In this subsection “overseas securities” means securities issued—

(a) by a government or public or local authority of a territory outside the United Kingdom; or

(b) by any other body of persons not resident in the United Kingdom.”

(6) Subsections (5) and (5A) (exceptions from subsection (1) for Eurobonds bought by dealers and for rights in a unit trust scheme where first buyer sells as manager) shall cease to have effect.

(7) Subsections (6) and (7) (definitions for the purposes of subsections (2) and (2A)) shall cease to have effect.

(8) This section has effect where, for the purposes of section 731(2) of the Taxes Act 1988, the interest receivable by the first buyer is paid on or after 2nd July 1997.

27 Payments to companies under section 687 of the Taxes Act 1988

(1) After section 687 of the Taxes Act 1988 (payments under discretionary trusts) there shall be inserted—

“687A Payments to companies under section 687

(1) This section applies where—

(a) trustees make a payment to a company;

(b) section 687 applies to the payment; and

(c) the company is chargeable to corporation tax and does not fall within subsection (2) below.

- (2) A company falls within this subsection if it is—
 - (a) a charity, as defined in section 506(1);
 - (b) a body mentioned in section 507 (heritage bodies); or
 - (c) an Association of a description specified in section 508 (scientific research organisations).
 - (3) Where this section applies—
 - (a) none of the following provisions, namely—
 - (i) section 7(2),
 - (ii) section 11(3),
 - (iii) paragraph 5(1) of Schedule 16,shall apply in the case of the payment;
 - (b) the payment shall be left out of account in calculating the profits of the company for the purposes of corporation tax; and
 - (c) no repayment shall be made of the amount treated under section 687(2) as income tax paid by the company in the case of the payment.
 - (4) If the company is not resident in the United Kingdom, this section applies only in relation to so much (if any) of the payment as is comprised in the company's chargeable profits for the purposes of corporation tax.”
- (2) This section has effect in relation to payments made by trustees to companies on or after 2nd July 1997.

28 Arrangements to pass on value of tax credit

- (1) After section 231A of the Taxes Act 1988 (which is inserted by section 19 of this Act) there shall be inserted—

“231B Consequences of certain arrangements to pass on the value of a tax credit

- (1) This section applies in any case where—
- (a) a person (“A”) is entitled to a tax credit in respect of a qualifying distribution;
 - (b) arrangements subsist such that another person (“B”) obtains, whether directly or indirectly, a payment representing any of the value of the tax credit;
 - (c) the arrangements (whether or not made directly between A and B) were entered into for an unallowable purpose; and
 - (d) the condition in subsection (2) below is satisfied.
- (2) The condition is that if B had been the person entitled to the tax credit and the qualifying distribution to which it relates, and had received the distribution when it was made, then—
- (a) B would not have been entitled to obtain any payment under section 231(2) or (3) in respect of the tax credit; and
 - (b) if B is a company, B could not have used the income consisting of the distribution to frank a distribution actually made in the accounting

Status: This is the original version (as it was originally enacted).

period in which it would have received the distribution to which the tax credit relates.

- (3) This section does not apply if and to the extent that any other provision of the Tax Acts has the effect of cancelling or reducing the tax advantage which would otherwise be obtained by virtue of the arrangements.
- (4) Where this section applies—
 - (a) no claim shall be made under section 231(2) for payment of the amount of the tax credit;
 - (b) no claim shall be made under section 231(3) or 441A(7) in respect of the tax credit;
 - (c) the income consisting of the distribution in respect of which A is entitled to the tax credit shall not be regarded for the purposes of section 241 as franked investment income; and
 - (d) no claim shall be made under section 35 of the Finance (No. 2) Act 1997 (transitional relief) for payment of an amount determined by reference to that distribution.
- (5) For the purposes of this section, the question whether any arrangements were entered into for an “unallowable purpose” shall be determined in accordance with subsections (6) and (7) below.
- (6) Arrangements are entered into for an unallowable purpose if the purposes for which at least one person is a party to the arrangements include a purpose which is not amongst the business or other commercial purposes of that person.
- (7) Where one of the purposes for which a person enters into any arrangements is the purpose of securing that that person or another obtains a tax advantage, that purpose shall be regarded as a business or other commercial purpose of the person only if it is neither the main purpose, nor one of the main purposes, for which the person enters into the arrangements.
- (8) Any reference in this section to a person obtaining a tax advantage includes a reference to a person obtaining a payment representing any of the value of a tax credit in circumstances where, had the person obtaining the payment been entitled to the tax credit and the qualifying distribution to which it relates, that person—
 - (a) would not have been entitled to obtain any payment under section 231(2) or (3) in respect of the tax credit; and
 - (b) if that person is a company, could not have used the income consisting of the distribution to frank a distribution actually made in the accounting period in which it would have received the distribution to which the tax credit relates.
- (9) If an amount representing any of the value of a tax credit to which a person is entitled is applied at the direction of, or otherwise in favour of, some other person (whether by way of set off or otherwise), the case shall be treated for the purposes of this section as one where that other person obtains a payment representing any of the value of the tax credit.
- (10) In determining for the purposes of subsections (2)(b) and (8)(b) b above whether a company could have used the income consisting of the distribution

in question to frank a distribution of the company, the company shall be taken to use its actual franked investment income to frank distributions before using the income consisting of the distribution in question.

(11) References in this section to using franked investment income to frank a distribution of a company have the same meaning as in Chapter V of Part VI.

(12) In this section—

“arrangements” means arrangements of any kind, whether in writing or not (and includes a series of arrangements, whether or not between the same parties);

“business or other commercial purposes” includes the efficient management of investments;

“franked investment income” has the same meaning as in Chapter V of Part VI and references to income consisting of a distribution shall be construed accordingly;

“tax advantage” has the same meaning as in Chapter I of Part XVII.”

(2) This section has effect in relation to distributions made on or after 2nd July 1997.

29 Unauthorised unit trusts

(1) Where a qualifying distribution—

- (a) is made on or after 2nd July 1997 but before 6th April 1999 by a company resident in the United Kingdom, and
- (b) falls to be regarded by virtue of subsection (2) of section 469 of the Taxes Act 1988 (unit trusts other than authorised unit trusts) as income of the trustees of a unit trust scheme to which that section applies, and
- (c) is not a foreign income dividend and does not fall to be regarded by virtue of any provision of the Tax Acts apart from this section as a foreign income dividend arising to the trustees,

the trustees shall be treated for all purposes of the Tax Acts (apart from this section) as if the qualifying distribution were a foreign income dividend.

(2) Subsection (1) above shall not apply—

- (a) if the unit trust scheme is a common investment fund established under section 42 of the Administration of Justice Act 1982; or
- (b) if, apart from section 469(2) of the Taxes Act 1988, the whole of the qualifying distribution would fall to be regarded as income of section 505 bodies.

(3) In this section—

“foreign income dividend” shall be construed in accordance with Chapter VA of Part VI of the Taxes Act 1988;

“section 505 body” means—

- (a) a charity, as defined in section 506(1) of the Taxes Act 1988;
- (b) a body mentioned in section 507 of that Act (heritage bodies); or
- (c) an Association of a description specified in section 508 of that Act (scientific research organisations).