



Finance Act 2002

2002 CHAPTER 23

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 2

OTHER PROVISIONS

Deduction of tax

94 Deduction of tax: payments to exempt bodies etc

- (1) In section 349A of the Taxes Act 1988 (exceptions to requirement to deduct tax from certain payments made by a company)—
- (a) in subsection (1)—
 - (i) after “by a company” insert “or a local authority”, and
 - (ii) after “the company” insert “or authority”,
 - (b) in subsection (6)—
 - (i) after “section” insert “(a)”, and
 - (ii) at the end insert “, and
 - (b) a payment by a partnership is treated as made by a local authority if any member of the partnership is a local authority”.
- (2) In section 349B of that Act (section 349A(1): conditions to be met), after subsection (2) insert—
- “(3) The third of those conditions is that the payment is made to—
- (a) a local authority;
 - (b) a health service body within the meaning of section 519A(2);

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- (c) a public office or department of the Crown to which section 829(1) applies;
 - (d) a charity (within the meaning of section 506(1));
 - (e) a body for the time being mentioned in section 507(1) (bodies that are allowed the same exemption from tax as charities the whole income of which is applied to charitable purposes);
 - (f) an Association of a description specified in section 508 (scientific research organisations);
 - (g) the United Kingdom Atomic Energy Authority;
 - (h) the National Radiological Protection Board;
 - (i) the administrator (within the meaning of section 611AA) of a scheme entitled to exemption under section 592(2) or 608(2)(a) (exempt approved schemes and former approved superannuation funds);
 - (j) the trustees of a scheme entitled to exemption under section 613(4) (Parliamentary pension funds);
 - (k) the persons entitled to receive the income of a fund entitled to exemption under section 614(3) (certain colonial, etc pension funds);
 - (l) the trustees or other persons having the management of a fund entitled to exemption under section 620(6) (retirement annuity trust schemes);
or
 - (m) a person holding investments or deposits for the purposes of a scheme entitled to exemption under section 643(2) (approved personal pension schemes).
- (4) The fourth of those conditions is that—
- (a) the person to whom the payment is made is, or is the nominee of, the plan manager of a plan,
 - (b) an individual investing under the plan is entitled to exemption by virtue of regulations under section 333 (personal equity plans and individual savings accounts), and
 - (c) the plan manager receives the payment in respect of investments under the plan.
- (5) The fifth of those conditions is that—
- (a) the person to whom the payment is made is a society or institution with whom tax-exempt special savings accounts (within the meaning of section 326A) may be held, and
 - (b) the society or institution receives the payment in respect of investments held for the purposes of such accounts.
- (6) The sixth of those conditions is that the person beneficially entitled to the income in respect of which the payment is made is a partnership each member of which is—
- (a) a person or body mentioned in subsection (3) above, or
 - (b) a person or body mentioned in subsection (7) below.
- (7) The persons and bodies referred to in subsection (6)(b) above are—
- (a) a company resident in the United Kingdom;
 - (b) a company that—
 - (i) is not resident in the United Kingdom,

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- (ii) carries on a trade there through a branch or agency, and
 - (iii) is required to bring into account, in computing its chargeable profits (within the meaning of section 11(2)), the whole of any share of that payment that falls to it by reason of sections 114 and 115;
 - (c) the European Investment Fund.
- (8) The Treasury may by order amend—
 - (a) subsection (3) above;
 - (b) subsection (7) above;so as to add to, restrict or otherwise alter the persons and bodies falling within that subsection.”.
- (3) In section 349C (directions disapplying section 349A(1))—
 - (a) in subsection (1)—
 - (i) after “a company” insert “or local authority”, and
 - (ii) after “the company” insert “or authority”,
 - (b) in subsection (2) for “neither” substitute “none”, and
 - (c) for subsection (4) substitute—
 - “(4) In this section—
 - “company” includes a partnership of which any member is a company; and
 - “local authority” includes a partnership of which any member is a local authority.”.
- (4) In section 349D (section 349A(1): consequences of reasonable but incorrect belief)—
 - (a) in subsection (1)—
 - (i) in paragraph (a) after “company” insert “or local authority”,
 - (ii) in paragraphs (b) and (c) after “company” insert “or authority”, and
 - (iii) in paragraph (d) for “neither” substitute “none”, and
 - (b) for subsection (2) substitute—
 - “(2) In this section—
 - “company” includes a partnership of which any member is a company; and
 - “local authority” includes a partnership of which any member is a local authority.”.
- (5) In section 98 of the Taxes Management Act 1970 (c. 9) (special returns, etc), in subsection (4B)—
 - (a) in paragraph (a), after “a company” insert “or local authority”,
 - (b) in paragraph (b)—
 - (i) after “the company” insert “or authority”, and
 - (ii) for “either”, in each place, substitute “one”,
 - (c) in paragraph (c), after “the company” insert “or authority”, and
 - (d) in paragraph (d), for “neither” substitute “none”.
- (6) In that section, for subsection (4C) substitute—
 - “(4C) In subsection (4B) above—

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“company” includes a partnership of which any member is a company; and

“local authority” includes a partnership of which any member is a local authority.”.

- (7) The amendments made by this section apply for the purposes of payments made on or after 1st October 2002.

95 Deduction of tax by persons dealing in financial instruments

- (1) Section 349 of the Taxes Act 1988 (payment of annual interest etc) is amended as follows.

- (2) In subsection (3) (cases where obligation to make interest payments net of tax does not apply), at the end insert “or

(i) in the case of a person who is authorised for the purposes of the Financial Services and Markets Act 2000 and whose business consists wholly or mainly of dealing in financial instruments as principal, to interest paid by that person in the ordinary course of his business.”.

- (3) After subsection (4) insert—

“(5) For the purposes of subsection (3)(i) above, a financial instrument includes—

- (a) any money,
 (b) any shares or securities,
 (c) an option, future or contract for differences if, but only if, its underlying subject-matter is (or is primarily) a financial instrument, or financial instruments, and
 (d) an instrument the underlying subject-matter of which is (or is primarily) creditworthiness.

- (6) For the purposes of subsection (5) above, the “underlying” subject-matter of an instrument the effect of which depends on an index or factor is the matter by reference to which the index or factor is determined.”.

- (4) This section applies in relation to the payment of interest on or after 1st October 2002.

96 Cross-border royalties

- (1) After section 349D of the Taxes Act 1988 insert—

“349E Deductions under section 349(1): payment of royalties overseas

- (1) Where—

- (a) a company makes a payment of a royalty to which section 349(1) applies, and
 (b) the company reasonably believes that, at the time the payment is made, the payee is entitled to relief in respect of the payment under any arrangements under section 788 (double taxation relief),

the company may, if it thinks fit, calculate the sum to be deducted from the payment under section 349(1) by reference to the rate of income tax appropriate to the payee pursuant to the arrangements.

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- (2) But, where the payee is not at that time entitled to such relief, section 350 and Schedule 16 shall have effect as if subsection (1) above never applied in relation to the payment.
 - (3) Where the Board are not satisfied that the payee will be entitled to such relief in respect of one or more payments to be made by a company, they may direct the company that subsection (1) above is not to apply to the payment or payments.
 - (4) A direction under subsection (3) above may be varied or revoked by a subsequent such direction.
 - (5) In this section—
 - “payee”, in relation to a payment, means the person beneficially entitled to the income in respect of which the payment is made; and
 - “royalty” includes—
 - (a) any payment received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design, process or information, or
 - (b) any proceeds of sale of all or any part of any patent rights.
 - (6) Paragraph 3(1) of Schedule 18 to the Finance Act 1998 (requirement to make return in respect of information relevant to application of Corporation Tax Acts) has effect as if the reference to the Corporation Tax Acts included a reference to this section.
 - (7) Paragraph 20 of that Schedule (penalties for incorrect returns), in its application to an error relating to information required in a return by virtue of subsection (6) above, has effect as if—
 - (a) the reference in sub-paragraph (1) to a tax-related penalty were a reference to an amount not exceeding £3000, and
 - (b) sub-paragraphs (2) and (3) were omitted.”.
- (2) In section 350(1A) of that Act, at the end insert “(or, where the payment is one to which subsection (1) of section 349E applies, the rate referred to in that subsection)”.
 - (3) In section 98 of the Taxes Management Act 1970 (c. 9) (special returns etc)—
 - (a) in subsection (4A)(b), after “subsection (4B)” insert “or (4D)”, and
 - (b) after subsection (4C) insert—
 - “(4D) A payment is within this subsection if—
 - (a) it is a payment to which section 349(1) of the principal Act (requirement to deduct tax) applies,
 - (b) it is made by a company which, purporting to rely on section 349E(1) of that Act (power for companies to take account of double taxation treaty relief when paying royalties), deducts less tax from the payment than required by section 349(1) of that Act, and
 - (c) at the time the payment is made the payee (within the meaning of section 349E of that Act) is not entitled to relief in respect of the payment under any arrangements under section 788 of that Act (double taxation relief) and the company—

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- (i) does not believe that it is entitled to such relief, or
- (ii) if it does so believe, cannot reasonably do so.”.

(4) This section applies in relation to payments made on or after 1st October 2002.