



Finance Act 2002

2002 CHAPTER 23

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 2

OTHER PROVISIONS

Deduction of tax

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.

(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.

Status: This is the original version (as it was originally enacted).

- (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—
- (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.