

Group dividends. FA83 s44; FA92 s51(1); FA94 s55; FA96 s58(1)(a) 165.—(1) (a) In this section—

“trading or holding company” means a trading company or a company whose business consists wholly or mainly in the holding of shares or securities of trading companies which are its 90 per cent subsidiaries;

“trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades.

(b) For the purposes of this section, a company shall be owned by a consortium if 75 per cent or more of the ordinary share capital of the company is beneficially owned between them by 5 or fewer companies of which none beneficially owns less than 5 per cent of that capital, and those companies are referred to in this section as “the members of the consortium”.

(c) In determining for the purposes of this section whether one company is a 51 per cent subsidiary of another company, that other company shall be treated as not being the owner of—

(i) any share capital which it owns directly or indirectly in a company not resident in the State, or

(ii) any share capital which it owns indirectly and which is owned directly by a company for which a profit on the sale of the shares would be a trading receipt.

(d) References in this section to a dividend or dividends received by a company shall apply to any received by another person on behalf of or in trust for the company but not to any received by the company on behalf of or in trust for another person.

(e) References in this section to dividends shall be construed as including references to distributions on the redemption, repayment or purchase by a company of its own shares or on the acquisition of those shares by another company which is a subsidiary of the Companies Act, 1963 ) of the company, and references to the receipt of dividends or to the payment of dividends shall be construed accordingly.

(2) (a) Where a company receives dividends from another company (both being companies resident in the State) and the company paying the dividends is—

(i) a 51 per cent subsidiary of the other company or of a company so resident of which the other company is a 51 per cent subsidiary, or

(ii) a trading or holding company owned by a consortium the members of which include the company receiving the dividends,

then, subject to paragraph (b) and subsections (3) to (6)—

(l) any such dividends shall be treated as not being distributions for the purposes of either section 159 or 162, and

(II) the tax credits in respect of those dividends shall not be available for payment, under any provision of the Corporation Tax Acts, to the company by which the dividends are received.

(b) The company paying the dividends may elect by notice in writing to the inspector that this section shall not apply in relation to any amount of dividends specified in the notice.

(3) An election under subsection (2)(b) shall not be valid unless—

(a) the election is made before the due date for the payment, by the company paying the dividends, of advance corporation tax for the accounting period in which the dividends are paid, and

(b) the advance corporation tax in respect of those dividends has been paid.

(4) Subsection (2) shall not apply to any dividend received by a company on any investments if a profit on the sale of those investments would be treated as a trading receipt of the company.

(5) Where a company purports by virtue of subsection (2) to pay any dividend without paying advance corporation tax and advance corporation tax ought to have been paid, the inspector may make such assessments, adjustments or set-offs as may in his or her judgment be required for securing that the resulting liabilities to tax (including interest on unpaid tax) of the company paying and the company receiving the dividend are, in so far as possible, the same as they would have been if the advance corporation tax had been duly paid.

(6) Where tax assessed under subsection (5) on the company which paid the dividend is not paid by that company before the expiry of 3 months from the date on which that tax is payable, that tax shall, without prejudice to the right to recover it from that company, be recoverable from the company which received the dividend.