

Surrender of advance corporation tax. FA83 s45; FA91 s69(a) 166.—(1) Where a company (in this section referred to as “the surrendering company”) has paid an amount of advance corporation tax in respect of a dividend or dividends paid by it in an accounting period and the advance corporation tax has not been repaid, and if throughout the accounting period the surrendering company would be treated as a member of a group of companies for the purposes of group relief under Chapter 5 of Part 12, the surrendering company may, on making a claim to the inspector, surrender the benefit of the whole or any part of that amount to any company (in this section referred to as “the recipient company”) which for the purposes of group relief would be treated as a member of the same group of companies throughout that accounting period or (in such proportions as the surrendering company may determine) to any 2 or more such companies.

(2) Subject to subsections (4) and (5), where the benefit of any amount of advance corporation tax (in this section referred to as “the surrendered amount”) is surrendered under this section to a recipient company, then—

(a) if the advance corporation tax mentioned in subsection (1) was paid in respect of one dividend only or of dividends all of which were paid on the same date, the recipient company shall be treated for the purposes of section 160 as having paid an amount of advance corporation tax equal to the surrendered amount in respect of a distribution made by it on the date on which the dividend or dividends were paid, and

(b) if the advance corporation tax mentioned in subsection (1) was paid in respect of dividends paid on different dates, the recipient company shall be treated for the purposes of section 160 as having paid an amount of advance corporation tax equal to the appropriate part of the surrendered amount in respect of a distribution made by it on each of those dates.

(3) For the purposes of subsection (2)(b), “the appropriate part of the surrendered amount”, in relation to any distribution treated as made on the same date as that on which a dividend was paid, means such part of that amount as bears to the whole of that amount the same proportion as the amount of the tax credit in respect of that dividend bears to the total amount of the tax credits in respect of the dividends mentioned in that subsection.

(4) No amount of advance corporation tax which a recipient company is treated as having paid by virtue of subsection (2) shall, under section 160 (3), be set against the recipient company's liability to corporation tax; but, in determining for the purposes of subsections (3) and (4) of section 160 what amount (if any) of surplus advance corporation tax there is in any accounting period of a recipient company, an amount so treated as having been paid shall be set against the recipient company's liability to corporation tax before any advance corporation tax paid in respect of any distribution made by the recipient company.

(5) No amount of advance corporation tax which a recipient company is treated as having paid by virtue of subsection (2) shall be set against the recipient company's liability to corporation tax for any accounting period in which, or in any part of which, the recipient company and the surrendering company would not be treated for the purposes of group relief under Chapter 5 of Part 12 as members of the same group of companies.

(6) Any claim under this section shall be made within 2 years after the end of the accounting period to which that claim relates and shall require the consent or consents of the recipient company or companies concerned (which shall be notified to the inspector in such form as the Revenue Commissioners may require).

(7) No amount of advance corporation tax which has been set off under section 160 (2) or dealt with under section 160 (3) shall be available for the purposes of a claim under this section, and no amount of advance corporation tax, the benefit of which has been surrendered under this section, shall be treated for the purposes of section 160 as advance corporation tax paid by the surrendering company.

(8) A payment made by a recipient company to a surrendering company in pursuance of an agreement between them as respects the surrender of the benefit of an amount of advance corporation tax, being a payment not exceeding that amount—

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and

(b) shall not be regarded as a distribution or a charge on income for any of the purposes of the Corporation Tax Acts.

(9) 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 payment of dividends shall be construed accordingly.